

NJORD Estonia: What should you know about real estate reservation agreements

It is quite common that before concluding a real estate transaction, the buyer would like to reserve the object of purchase. Hence a real estate reservation agreement is concluded. The reservation period specified in the reservation agreement is typically used to get financials for the purchase in order. Additionally, the agreement allows for the opportunity for the interested buyer to calmly get familiar with the immovable and all the information about it. So, what should the parties know before concluding a real estate reservation agreement?

Purpose of a reservation agreement

The main purpose of the reservation agreement is the sellers' obligation to not offer and sell the immovable to a third person during the agreed-upon period, for which the seller usually gets a reservation fee.

A reservation agreement can be unattested

The law does not give a specific format to the reservation agreement; therefore, it can be unattested. The main risk when concluding an unattested agreement is that the content of the agreement may refer to an immovable's contract of sales preliminary contract.

If the function of the reservation agreement is acquiring the immovable, then it must be notarially authenticated. A preliminary contract, with the function of acquiring the immovable, is void when that requirement is not followed. A void transaction does not have any legal consequences from its conclusion and the outcome might be significantly different for the parties from what was expected when the agreement was signed.

If a sales contract is concluded after a reservation agreement, then usually the reservation fee is deducted from the purchase price of the immovable and disputes do not arise. However, when the sales contract is not concluded, conflicts arise easily. The disputes are usually about the fact whether the function of the reservation agreement is to just reserve the real estate or is it a preliminary contract, that was concluded in the wrong format. In case of the latter, the contract is void, and the profits made from a void agreement must be returned. This means, that the paid reservation fee, must be returned to the buyer and the buyer must take into account that they no longer hold the exclusive rights for the conclusion of the sales contract. Thus, the buyer is left without the immovable.

No obligation to acquire the immovable with a reservation agreement

The Estonian Supreme Court's Civil Chamber has explained, that the reservation agreement cannot even indirectly include an obligation to purchase the immovable. The fee for reservation can only be for not transferring the immovable for the agreed upon time period, therefore neither of the parties have an obligation to later conclude a sales contract on the basis of the reservation agreement. If the agreement includes references to the contract of sales, the agreement is probably a preliminary real estate contract, which must be notarially authenticated, notwithstanding the name. Therefore, it is important to make sure, before reserving a real estate object, that the content of the agreement meets the parties' expectations. If the aim for the buyer is to purchase the immovable during the reservation period, another form of contract should be considered.

The fee for the reservation should not be unreasonably high, nor be a prepayment

The Supreme Court of Estonia has also found, that it is important to assess the amount paid for the reservation and what happens with the sum in case there will be no purchase of the real estate. Namely, the reservation fee cannot be higher than the reasonably paid fee for the reservation. In case the reservation fee is unreasonably high, the court finds, that it is an indicator that the parties wish to conclude a preliminary real estate contract, which must be notarially authenticated. The amount, which is considered reasonable depends on the length of the reservation period and interest in the immovable, among other things.



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