

Acquisition of property by acquisitive prescription

A piece of property can be acquired in many different ways. Property may be bought by way of provisions of the civil law (including transfer of ownership, acquisitive prescription, heirship) as well as administrative law (nationalization, franchisement). Among the main ways one can acquire title of ownership to real estate under civil law is by transfer of ownership title through an agreement. Among the less common ways of acquiring a property is acquisitive prescription. Provisions regulating acquisitive prescription can be found in Art. 172-176 of the Polish Civil Code.

A property is acquired by acquisitive prescription by its possessor as a consequence of a lapse of time. The objective of the establishment of the institution of acquisitive prescription was to mitigate the gap between the legal state and the reality of possession. Such gaps are created as a consequence of the informal trade in real estate, that is when an agreement to transfer ownership title is not concluded in the form required under law – thus in the form of a notary deed – which leads to the transfer of possession but not of ownership.

Pursuant to Art. 172 of the Polish Civil Code, any piece of real property can be acquired by way of acquisitive prescription, thus land, buildings and dwellings. In the case of land, acquisitive prescription can apply both to the entire piece of property or to a separated part thereof. In the case of the latter, acquisitive prescription leads to the creation of a separate property that is distinct from the original property. In the case of a dwelling, acquisitive prescription must concern the entire property and not only part thereof, i.e. only one room in a flat.

The right subject to acquisitive prescription is usually the title of ownership to a given property. By virtue of Polish law, the right of perpetual usufruct as well as some land easements can also be acquired by acquisitive prescription. It is also possible to acquire by acquisitive prescription an interest in a title of joint ownership to a property.

Two conditions precedent must be met in order for a property to be acquired by acquisitive prescription: possession of the property and lapse of time.

Possession of property

In line with the wording of Art. 172 of the Polish Civil Code, the property must be owned autonomously, thus, by an owner-like possession – effecting exclusive use of the property, realisation of profits from the property, etc. The owner-like possessor is the informal acquirer of the property who concluded a property purchase agreement without keeping the form of a notary deed, thus he did not become its owner but only its possessor.

It is important that the possessor hold the property in an uninterrupted manner, as only then can it be acquired by acquisitive prescription upon the lapse of a defined period. Thus, there are various presumptions, e.g. that possession interrupted by a temporary barrier does not break possession, for example a person that shows that he possessed a property in various moments does not have to prove that he also possessed it during the transition periods. Moreover, the fact the property is not possessed during temporary barriers (flood, fire) does not constitute a break in possessions. Same holds true of the reinstatement of possession of property, e.g. after it is taken over by someone not authorised to do so.

Regulations concerning period of prescription apply to the running of acquisitive prescription. Thus, in some cases the running of acquisitive prescription can be broken (to then start running anew) or be suspended (to then continue to run upon the lapse of defined circumstances). The running of an acquisitive prescription is broken when, for example, a process is instigated that concerns the property that is under the process of acquisitive prescription. In turn the process can be suspended when, for example, the property is owned by a person who is not an adult. In such a case, the

property will be acquired by way of acquisitive prescription no sooner than two years upon the person becoming an adult.

In some cases, that in the course of the running of acquisitive prescription, its possession is transferred from one person to another, for example, in the case of the transfer of possession by way of inheritance. Then, pursuant to the relevant regulations, the existing possessor can add to the period of possession the time the property was possessed by his predecessor.

Lapse of time

Today, for a property to be acquired by acquisitive prescription, 20 or 30 years must lapse under law, depending on whether the possessor possessed the property in good or in bad faith. The possessor is in good faith because for objective reasons he does not know that he does not have the right to hold the title of ownership to the property. This is the case, for example, if a person is not aware that he has acquired a property from a person that was not its owner or person who sold the property was not capable under law to perform legal actions, and thus, any legal actions taken by him are null and void.

As stated earlier, acquisitive prescription of a property leads to the acquisition of the ownership title to the property – by virtue of law upon the lapse of the required period. Possessor of the property should file with the court an application to recognise the acquisitive prescription. The request should comply with the formal requirements imposed under general regulations relevant to civil law proceedings, and should also list other interested parties. If the applicant does not list other interested parties, then the court will publish an announcement to call everyone who is interested to take part in the proceedings. Then upon the lapse of three months as of the announcement the court defines the date of the proceedings to which the court invites persons who have come forth as interested parties. If, in the course of proceedings, the court determines that the prerequisites for acquisitive prescription have been fulfilled, it will issue an acquisitive prescription decision by virtue of which it will be possible to enter the title in the land and mortgage register. It is worthy to note that acquisitive prescription does not lead to the expiration of limited property rights established on the title of ownership to property, for example mortgages.

Łukasz Sęk

*Kancelaria Adwokatów i Radców Prawnych
Miller, Canfield, W. Babicki, A. Chelchowski
i Wspólnicy Sp.k.
www.millercanfield.pl*