

Trouble in the attic

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In your zeal to join the ever increasing community of real estate investors you buy a built-out, fully renovated attic in one of the many central privatized apartment buildings in Riga. Conveyancing seems straightforward, as the seller has produced what you have already determined to be a bona fide landbook registration document, showing that it has good title to transfer to you. And landbook registrations in Latvia are sacrosanct, or so you have been led to believe. Now you have a great view of Riga rooftops, and even a deck for barbeques or that romantic evening beneath the stars on a hot summer's night. A perfect scenario, right?

Sorry. You may be in serious trouble. Recently there's been a disturbing practice of Latvian prosecutors bringing claims to courts for undoing attic privatizations. There are a number of things that are disturbing about these claims, beyond the obvious that you might lose your apartment. Here are some of them.

1) You purchased an attic in reliance on Latvian landbook documentation, showing it to be free and clear and unencumbered. No amount of searching would have revealed that a future problem might exist that jeopardizes the entire transaction, and all of your investment in the attic acquisition, not to mention your relations with the bank that granted you a mortgage to finance the project.

There is a principle in law that states that you are entitled to rely upon government certification. There is also the notion of estoppel, or detrimental reliance against your interest in good faith. The government has induced such reliance by setting up a landbook implicitly guaranteeing that what is in the landbook is to be taken seriously. Ordinarily, if you are induced to rely to your detriment in good faith against your interests, then you should have recourse against the party upon which you relied – in this case, the government. And if you lose in any case in Latvia on this issue brought by the Prosecutors' Office, you will appeal it, eventually, if need be, to the European Commission, which you have very good reason to believe will take a dim view of the violation of prop-

erty rights in Latvia. It will probably grant you compensatory damages from the Republic of Latvia for your trouble.

2) This all started with a complaint from a couple of apartment owners in the building that the privatization was not valid. But why do they have standing, you wonder. After all, they themselves had no right to privatize the apartment. It was the artist in the attic, not them, who could privatize the attic under the admittedly somewhat strange legal regulation that artist's attic studios could be privatized by artists.

Ah, but the complainers probably would have liked the apartment attic to be considered to be part of the building's common area in which they have a share with the other apartment owners. And they had heard that if they could only prove that the attic was not used as an artist's studio, they could get the Prosecutor's office to try to unravel the whole chain of title and revoke the privatization.

Does this all sound like some kind of bad dream? The truth is that this is exactly what is happening in Riga today. As these proceedings have been initiated by co-owners in buildings, this also seems to be fertile ground for co-owners to try extracting payment.

Ultimately, if there were non-criminal irregularities (or for that matter criminal irregularities) with attic privatizations, it is the government itself (together with the criminals, if applicable) and not the third party purchasers acting in good faith who should have to bear any losses or pay compensation. Third-party purchasers in good faith are not properly subject to having their title unraveled because the government has retroactively belatedly decided that all was not well with the privatization that it was itself responsible for.

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