

## Registration: Is it what you want?

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Almost everyone knows that registration of title to real estate in the landbook is the best way to evidence ownership of real estate. Mere signing of documents at a notary's office is a little like being halfway across the ocean on a transatlantic flight. It's a good start, but ultimately you want to reach the final destination. And that is usually best confirmed by a landbook title certificate in the hands of the acquirer, as contemplated under sections 993 and 994 of the Civil Law. Similarly, it is obvious to most people that mortgages need to be registered.

But legal title and mortgages are not the only things registrable in the landbook, and this is where there is a bit more complexity, because we start to get into the realm of discretionary registration, which may be favorable or unfavorable depending upon your position in the transaction. There are too many registrable instruments to cover in this brief article, but here are a few of the main ones.

In the case of leases, the situation is fairly straightforward. If you are a landlord/owner/building manager, chances are that you do not want the lease registered. Why? Because it is harder to evict someone with a registered lease. Mere notice of eviction will not do the trick. If the lessee disputes the grounds for eviction, then you may have a protracted court battle on your hands, and that is not a very efficient model for management of a property.

On the other hand, if you are a lessee, you will ordinarily want to have the added protection of a registration of the lease. The landlord may not want to grant you that registration, and so it may be a business issue over which the parties simply have to agree to a final position. An additional good reason for the lessee to have a registered lease is what may happen if the building changes ownership. Although there is a contract argument in any case, sometimes when a building is sold the new owner chooses to ignore the validity of any unregistered lease. It is much easier for the new owner to take that position in an unregistered lease situation than it is in a registered lease situation.

Registration of subleases is still fairly new to Latvia and should be approached with caution. Do not assume that just because you have a valid registered lease and it states that you can sublet the premises without the landlord's consent, and

that you have the right to register the sublease, that you will have smooth sailing at the registry office in the event that the landlord takes a disliking to you or the subtenant. The concept of sublease is not adequately dealt with under the law, so there may be some issues that arise out of the legal ambiguity.

What about building management agreements? Registration of such agreements protects the management company and not the owner. It is increasingly common to see building developers include the retention of management rights over the building as a part of their business plan to augment their income from the sales of the units. As a result, those entering into a purchase and sale agreement with the developer may find themselves also faced with a contract of adhesion vis-a-vis post-sale management of the property.

The property manager is interested in having the management agreement registered in order to ensure that it is binding upon subsequent purchasers to the end of term. This may be irrelevant if the property owner/occupier is satisfied with the service of the building manager. But if the property is transferred, it may be more difficult for the future owner to renegotiate terms of the registered agreement. And registration of a management agreement may also cause interference with an attempt by the building owners to adopt alternative approaches to building management. The process of de-registration where there is disagreement between the manager and the owner may be costly and time consuming.

While the situation may be quite clear vis-a-vis title and mortgages, in most other cases involving whether to register something with the landbook, it is best to be aware that there is often no pre-set legal "right" and "wrong" approach and that the most sensible thing to do is carefully analyze what is best from a business perspective – with a healthy degree of skepticism – and then make a decision.

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