

Periodic property administrative and legal issues

Ligia Daciana MUNTEANU, PhD.

“Titu Maiorescu” University, Faculty of Law and Economics Science, Targu-Jiu,
Romania
ligiadaciana@yahoo.com

Abstract

In the conditions of an increasingly pronounced openings of Romania towards civilization and Western markets due to the accession to the European Union with all its correlative elements-in particular, the process of approximation for the implementation of the Community acquis-the Romanian legal system has known and still know a series of transformations to the regulatory level. Such trends were manifested in recent times, among others, and by importing previously unknown legal institutions or which, although widely known, could not be implemented purely for technical reasons.

Updating the internal regulations were required and because the European normative acts regulates new types of contracts, adapted to the evolution of the market and new products available, providing an effective consumer protection in such cases, taking into consideration the fact that, in the absence of immediate requirements of these types of contracts, consumers would not benefit from the rights provided for by the European normative acts mentioned above. However the transposition in national law of European norms and importing European law institutions, without strict rules and an adaptation of their national law, can give birth to problem situations both in administration and in the judiciary.

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INTRODUCTION

How Romanian market in timeshare or time sharing is in an early stage has been useful takeover, adaptation and the experience of the largest users in the field, the US and the European Union, where laws and consecration of the concept of timeshare ownership is unmatched. Timeshare concept of English origin, was imported in juridical sciences in the IT field, having originally meaning a technology that allows multiple users simultaneous access to a central computer through separate terminals.

According to a definition enshrined in the American system, timeshare is a form of property right attributes are invested in more people, each of which is entitled to use that property for a period of time, such as one or more weeks. The institution is also defined as a form of property divided, which normally has as its object or recreational

vacation properties in condominium regime and the corresponding rights belong to several people, each having the right to use the property for predetermined periods a year.

Although normally covered under timeshare property is represented by a residential complex under a condominium, those who develop this type of business (developers) have applied the concept to other types of timeshare properties such as yachts, campgrounds or car parks recreation ("recreational vehicle parks'). In fact, the United States, the concept of timeshare is represented by any facility or property for holiday or leisure.

SECTION I -Type periodic legal ownership compared to other ways of property-rights legal and administrative aspects.

Interesting aspects can be observed in analyzing periodical ownership as a right of ownership in which each holder exercises his right credentials during a period determined successively repeated at regular intervals, in terms of similarities and differences they present it way reported in other ways property rights and even a proprietary simply.

Ownership is simply when its mere existence and when belonging to a single owner, which carries all three attributes of property: usus, fructus and abusus. If unquestionable existence of the right to property is also found periodic, but its essence is precisely the lack of exclusive character, that ownership is not a right periodic simply property, so we can conclude that we are in the presence of a right affected property of ways.

The doctrine, cvasiunitary opinion is that of ownership arrangements are: property resonable, canceled its forms joint (the interest in ordinary or temporary on forced and perpetual interest in and condominium) and the provisions of the new code Civil (article 687-692) Periodical property is regulated as a way of ownership. So, to better understand the ownership Periodicals believe it is of interest comparison with other ways of property rights, and other institutions of civil law are in staransa connection with the exercise of ownership.

The property is revocable legal way of expressing the situation of ownership of this right temporal uncertainty, threatened with its loss if meeting a condition for

admission rezolutorii or action for annulment. This legal tool comprises two forms: property and property reasonable year, when ownership was acquired under an act annulled, invalid relative.

Property periodic property resembles revocable by the fact that among both cases, the powers shall be exercised on the whole good, and very right remains subject unfractionated.

The essential difference is that periodic property has a mere existence, while revocable property is uncertain terms its existence is at risk of extinction.

If the joint property right holders exercise their powers together and simultaneously, but if time-sharing site every exercise alone and exclusively the property right. The major differences are the property report or temporary interest in common: the essence of this type of property temporarily keep its character, one not being forced to remain in joint possession, whereas if the property right holders are not regular question of giving up joint for the simple reason that they are not in ownership; if the co-ownership interest in ordinary or temporary share is stretching far right of each co-owner of the asset, while for regular property consists of basic operational concept slice of time each holder exercises his right credentials; if not understood in terms of use of property, co-owners according to our law, are not shared use, single solution with the volunteer division (paragraph 3 art.671 NCC) on the other hand, co-owners exercised a continual and perpetual , while ownership is neither periodic continuous but periodically or perpetually. (Contract, according to OG 14/2011, ends "for a minimum period of 1 year ... - in the absence of a provision maximum under the general rules of civil law, we can say that the duration of the contract may be determined or determinable.)

Shares in property on forced and perpetual aims universality of property or goods which by their nature are common to all co-owners for the use can not be divided in nature, without this legal operation not become unfit for the use to which they were originally intended. Unlike property periodical that covers any kind of goods, divisible and indivisible.

Another difference is that while interest in the property has forced and perpetual, as the name implies, a forced character (constituting itself and preserving beyond the

control of the co-owners) property consists in a periodical manifestation of will (contract randomly, as if Golden Villa jackpot).

There is one final difference between the two types of property. While the first is incidental and therefore can not be sold, alienated or mortgaged only with the principal right, the property is a right periodic independently, not depending on any other law.

Also, the periodic nature of property, only use good common property is that which is repeated periodically and successively exerted by co-owners, but only in determined time interval that lies everyone. However, in literature and the opinion was expressed that each co-owner alone shall exercise all the attributes of entering the contents of the legal or.

And to joint ownership in condominium differences are manifold. An important aspect to be considered is that this way of ownership is applicable only in respect of goods Community regime of spouses, legal regime, whereas in the case of ownership Periodicals this is achieved by the expression of will the purchasers, who may be physical persons and / or legal minimum of two (not more than two, as in the case of spouses).

Also, another difference is that the condominium common property is born under the law, regardless of the will of the spouses, while property incurred through periodical manifestation of the will of acquirer, as I said in a previous paragraph. It should be clarified that, if timeshare property, the owner has the exclusive right to property, while, if common property condominium owners can not dispose of their right only with the consent of the other, which often involves there.

One last difference is that if the condominium common property holders know neither their right nor the extent of the property in their materiality, which is not true in the case of periodic property.

Given these differences of substance, it is argued that ownership Periodicals is a new way of ownership, regulated by the new code under the name of periodic property in which "each holder exercises its prerogatives name in interest law its proprietary period, repeating perpetual succession and at regular intervals, assuming at least two owners, who may be individuals or legal entities (including the state), between which there is no legal relationship. "

As regards the alleged property Periodicals this way is analyzed only temporary transmission and use of goods does not seem to be the issue that made use of the right object may be temporary, but the right itself is not going to appear as regular . This should be taken into account more so as it provides that property owned periodical may be sold, leased, mortgaged, subject to an exchange contract between owners of property periodically on buildings or different time periods or transmitted by inheritance, so that the right can be achieved by legal acts but also by legal acts, such as acquisitive prescription, and being equally applicable requirements of the land register.

Property can bring periodical was still critical, namely that while the sharing of the usage may be more advantageous in terms of defending the rights legally acquired than the situation itself would share ownership, operation would not bring any additional benefit to those interested. Indeed, between right holders are born legal relations (poses no problem unanimity rule, mandate management tacitly or business as if co-owners), they are each others parties to the contracts signed by each of them with the seller. If one of purchasers would prejudice the rights of others, it could not defend in court than by the seller, having no direct action against the acquirer having abused his right.

Article 646 of the NCC give a regular property ownership forced the new regulation undefined property periodically, but in art. 687 NCC, referring to the characteristic considered essential for this way of ownership, namely the existence of several holders who exercised successively and repetitive use of the asset, specific attribute ownership of a movable or immovable., In timed intervals, equal or unequal.

Hence it can be concluded that, in fact, the legislature sees this form of property as a common property-quota parties forced. Also in NCC, in Article 688 is scheduled periodic manner of acquisition of the property ie only through a legal act, excluding any other mode of acquisition. All the current regulation conferred by NCC when the subject is the periodic property immovable property, acquiring the contract is subject to registration in the Land Registry.

Statements practical use of property regular and arid ways in regulation of this law may lead to future purchasers of Acetic kind of property, a number of practical difficulties and inconveniences.

Thus, if we consider the acquisition of ownership by sale purchase periodical. This mode of acquiring them are incidents tax code provisions in force concerning building tax that is calculated by applying a rate of 0.1% of the property value and indices by area, type of building, its facilities, year of construction, Tier village and the area where the property is located. For owners who have several buildings outside the home, tax payable increased by 65% for the second, 150% for the third and is three times higher if it includes more property.

The question in these situations is that it will evolve and how the distribution of local taxes because at this time there special tax provisions applicable to such property, for which most likely will apply the classical rules of co-ownership; increase the tax payable by individuals who own several buildings raises a further problem because current tax law does not distinguish on the ownership periodic, so that the increase will be applicable even if the package is limited to one week vacation and Society commercial, local taxes related to these properties are even more burdensome.

The birth of this problem because, as it knows the essence of property is that each holder regular exercise and repetitive sequence specific attribute ownership of the use of movable or immovable property in timed intervals, equal or unequal.

Regarding the legal documents relating to the ownership Periodicals result of the civil code beside each co-owner has the right to make all acts of preservation of the common good and the related obligation to make such acts. Of these the ones that are the responsibility of the joint proprietor exclusive, as are the small acts conservation repairs due to normal use of the asset. In terms of record keeping regarding asset structure or major repairs, they must be incurred by each co-owner in respect of its temporal fraction of the ownership right. This entitles the co-owner who advanced the expenses necessary to carry out these acts of conservation to receive damages from the other.

NCC is apparent from reading Article 689 can not be concluded no doubt that acts on good management, by co-owners, even with observance of the majority required by art. 642 paragraph 1 of the NCC.

Legal documents can be signed by the joint owners are those relating to its share, so will only be able to sell or mortgage its temporal fraction (art. 2379, paragraph

1, letter c NCC). In case of concluding acts of management or disposal which infringes other co-owners, co-owner injured shares may exercise against the third party owners who took possession of the common good, after concluding act.

SECTION II Conclusions.

In conclusion, based on internal regulations for intellectual property rights remain unfractionated periodic materiality not shared the shares, but the time slots in which each holder exercising his right credentials. Regarding the length of time she returns, each co-owner may conclude, under the law, acts such as signing, selling, mortgaging etc.

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From art economy. 687 of the NCC, which includes the definition of this new legal ways of existence of private property right, easily deduce what are the conditions of this method, namely: sequential, repetitive exercise prerogatives of ownership, on a movable or immovable, in intervals determined time, equal or unequal, by individuals or legal entities between which there are no legal relations.

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