

Contract for work

Handover of premises at the expiry of lease

When entering into a lease contract, the tenants often focus only on the commercial conditions of initiation and subsequent operation in the given premises (the amount of a fit-out contribution, rent, service charges, etc.). The tenants should, however, not omit regulating the obligations associated with vacating the premises when the lease expires.

In practice the tenants sometimes come to the displeasing finding how costly it is to restore the premises to the original state after the years of lease. Furthermore, parties often do not know exactly in what condition the premises were at the time of the handover.

Therefore, it is recommended that this issue is not omitted when negotiating a lease contract. The tenants should insist on a precise specification of their obligations or (ideally) on reaching the agreement to return the premises in the condition in which they will be (so that the tenant does not incur any extra costs when the lease expires).

If it is agreed in the contract that the tenant is obliged to restore the premises to the original state, their condition needs to be documented in detail during the handover in order to prevent disputes between the parties that may arise in the future.

Lukáš Zahrádka

Disputes arising from contracts for construction work are quite common. Construction works are complicated and involve various professions. Of course the disputes cannot be, therefore, absolutely excluded. However, you can reduce the risk of their occurrence and the risk of failure considerably by appropriate actions.

See below the important matters to which close attention should be paid when drawing up your contracts:

- Specify the work and the price of the work exactly. Inaccurate specification constitutes incorrect expectations and leads to the conflicts. Keep in mind that Czech courts are formalistic and what is stated in the contract is decisive.
- The parties must be careful when accepting someone else's project documentation – they may be held liable for it.
- As for the dates of the work delivery and the payment dates, always make it clear what has to be done for them to be deemed met.
- Have it always clearly stipulated who the owner of the work is (particularly if the work takes place on someone else's land).
- The warranty period and the rules for exercising entitlements from defects. The client should always insist on an option of a direct rectification of the defects.
- The work scope, price and other important matters should be amended only in a written amendment since the courts do not have to recognise any other form. If you are not absolutely certain, be rather formalistic (courts are formalistic too). Unfortunately, disputes arise even between friends and the winner is the one who has convinced the court.

And what about settlement of disputes? What is more suitable – arbitration or general court? Although we mostly recommend arbitration clauses and are successful at arbitration courts, we advise caution. If you want a fast solution and your lawyer has a good experience with the arbitration proceedings, opt for an arbitration court. If you want to have an option to appeal, opt for a general court.

Stanislav Servus



Sale of plants on a land

The principle *the surface yields to the ground (superficies solo cedit)* means that everything that is connected with the land forms its part and shares its fate. This does not, however, apply without exceptions. Even the plants situated on the real estate can be sometimes treated differently than the real estate itself.

The Supreme Court has recently decided on seedlings of trees in a nursery that were intended for replanting. According to judgment file No. 25 Cdo 1335/2013 they are not permanently attached to the ground so they are movable items. As a consequence, they may be – like any other movable item – sold as goods.

This is not the first time when the Supreme Court took account of the purpose of the plants this way. The older decision file No. 25 Cdo 73/2004 concerned a forest nursery with seedlings intended for sale. With regard to their separate economic purpose the seedlings had the characteristics of a separate item in the legal sense, and could be owned by a person other than the owner of the land.

If you alienate land, think also about the plants growing on it and their nature or purpose. This way you can avoid unpleasant surprises arising from the fact what was and what was not transferred under the contract.

Tomáš Mls

Technical improvement of leased property

The tenant may make a change to the leased property only with the prior consent of the landlord. If the lease contract was made in writing, the consent must be written as well. If the tenant carries out “technical improvement” (“TI”) of the leased item, the tenant may depreciate TI in tax terms only provided that all the following conditions are fulfilled:

- TI is paid by the tenant.
- The landlord granted to the tenant the written consent with the depreciation of TI.
- The owner does not increase the initial price of the real estate by the value of the completed TI.
- The tenant classifies TI into the respective depreciation category in which the leased real estate is classified by the landlord.

Depending on the fulfilment of the above stated conditions, TI carried out and paid by the tenant (i.e. paid beyond the rent) may be either not depreciated in tax terms at all or may be depreciated by the tenant or landlord. If the tenant who carries out TI as a part of the rent payment which is recorded as a tax deductible expense by the tenant, then it may be depreciated by the landlord.

It is important to remember that if TI of a leased item is carried out and financed by the tenant, the owner may earn a non-monetary income which consists in the expenses (costs) spent by the tenant on TI of the leased item beyond the agreed rent (i.e. not paid by the owner / landlord).

If TI is depreciated by the tenant, the owner (landlord) may then increase the initial price (net book value) of the leased real estate in the year when the lease expires or in the year when the owner revokes its consent with the depreciation of TI by the tenant; in the given year the owner (landlord) must also tax its non-monetary income (performance) with the income tax, where such non-monetary income (performance) consists of the expenses on TI depreciated by the tenant with the consent of the owner (landlord). This non-monetary performance shall be valued with the net book value which would be the value of TI in straight-line depreciation, or with the value determined in an expert opinion.

After increasing the initial price (net book value), the owner continues depreciation from the increased initial price (in straight-line depreciation) or from the increased net book value (in accelerated depreciation).

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