



NEWS, LATEST, CURRENT TOPICS

USUCAPION REGISTERED UNDER FALSE PRETENSE - HOW TO REACT?

“(...) it is important to petition the court to (1) order the person who acquired the property by usucapion to recognise the ownership rights of the applicant, as well as to (2) cancel the land registry entry that formalised the acquisition of the property by usucapion.”

Usucapion is still one of the ways of acquiring ownership rights on immovable assets (including urban buildings) in Portugal. In a nutshell, it is based on the attribution of acquisitive effect to the possession of a given asset, maintained for a certain period of time.

Possession is not to be confused with mere detention, as it manifests itself when one:

1. Not only acts in a way that corresponds to the exercise of ownership rights, exercising material powers over the asset,
2. But also has the effective intention of exercising these powers as if one was the registered holder of the ownership right. One possesses with the conviction that they are doing so in their own name and not on behalf of someone else. This psychological element is decisive in distinguishing true possession from mere detention.

In practical terms, usucapion gives the possessor the possibility of becoming the registered owner of the property in question. This happens via a notarised deed for this specific purpose.

This procedure is triggered by the possessor declaring, before a notary, the circumstances on which their alleged acquisition is based and the reasons why they are unable to prove it by normal means.

If the notary considers that the reasons invoked by the interested party are acceptable, prior notification of the registered owner is carried out – by personal notification or, more often than not, by public notices posted for a period of 30 days at the civil registry office in the municipality of the property and at the headquarters of the respective parish council.

AUTHORS



JOANA VICENTE
Lawyer

After the 30 days have elapsed, the deed is granted, in which the possessor, accompanied by three declarants, states the circumstances that give them the status of true owner.

The granting and registration of a deed of usucapion is not irreversible. If the registered owner or their heirs become aware that someone is claiming ownership rights this way, they can challenge the deed in court.

In this type of legal proceedings, it is important to petition the court to (1) order the person who acquired the property by usucapion to recognise the ownership rights of the applicant, as well as to (2) cancel the land registry entry that formalised the acquisition of the property by usucapion.

It should be emphasised that, as is common jurisprudence in the Portuguese courts, the person who registered the usucapion will have the burden of proving the acquisition and validity of their right and will not benefit from the normal presumption of ownership that arises, as a general rule, from the land registry.

Initiating these court proceedings to cancel the deed is not subject to any limitation period and can be brought either before or after the registration of the usucapion is carried out by the land registrar.

However, there is an important deadline to bear in mind: the Civil Code protects the rights that may have subsequently been acquired over the property, for a price, by a third party in good faith, if the registration of this acquisition by the third party precedes the registration of the court proceedings. This is only not the case if the court has been seised before three years have elapsed since the transaction was concluded. Thus, the likelihood of success of court proceedings will be all the greater if the proceedings are brought within this three-year period.

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As soon as it is pending, the court claim must be notified:

1. To the Land Registry Office, for the purposes of registering the petition at the land registry office, as an addendum to the description of the asset in question;
2. To the notary's office where the deed was granted, in particular to prevent the notary from issuing certificates of the deed until there is a final decision on the case.

Lastly, it should be noted that the declarant of usucapion under false pretenses may be criminally liable for giving false declarations before a public entity. In any case, criminal proceedings will not be an effective means of cancelling the effects of the notarial deed.

