



**SZEC SKAY**  
**ÜGYVÉDI IRODA - ATTORNEYS AT LAW**

H-1055 BUDAPEST, KOSSUTH TÉR 16-17  
(MAIL: H-1245 BUDAPEST PF/POB 1228)  
HUNGARY

TEL: +36 (1) 472 3000 • FAX +36 (1) 472 3001 • INFO@SZEC SKAY.COM • WWW.SZEC SKAY.COM

**NEWSLETTER**  
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**OPINION OF THE SUPREME COURT OF HUNGARY CONCERNING CERTAIN  
ISSUES RELATING TO PRE-EMPTION RIGHTS**

**Dr. Zoltán Balázs Kovács, LL.M.**

The Supreme Court of Hungary issued a Civil Law Opinion on 24 June 2009 on various practical issues concerning pre-emption rights, as governed by the Civil Code.

In practice, it is quite common for real property to be owned by more than one entity, with certain persons (private or legal) having a pending ownership claim to the real property. If an entity wishes to acquire real property or a certain part of it, it must submit the relevant sale and purchase agreement with the necessary documents to the competent land registry along with the request to register its ownership title to the real property. The ownership claim of the entity is then registered as a so-called marginal note in the land registry, which means that although the acquiring entity's ownership is not yet registered, it has a pending ownership claim to the real property.

Under the Hungarian Civil Code, co-owners have a statutory pre-emption right in regard of each other's ownership portion. The question was whether this rule also applies to those who are not yet owners of a real property but have a pending ownership claim to the real property registered in the land registry.

Under the Civil Code, if an owner grants a pre-emption right in regard of a specific asset in a written agreement and wishes to sell the asset, he/she is required to notify whoever has a pre-emption right of the offer he has received prior to concluding the sale and purchase agreement. The owner is not subject to this obligation if compliance would imply extraordinary difficulties or a substantial delay on account of the location of the beneficiary's (i.e. the person who has a pre-emption right) domicile or other circumstances.

If the person having a pre-emption right issues a statement of acceptance to the owner regarding the offer, the contract is deemed to have been concluded between them. If such person fails to issue a statement within the period generally established for the acceptance of an offer, the owner may sell the asset as per the offer or under more favourable terms.

Pursuant to the opinion of the Supreme Court, entities that have a pending, registered ownership claim to real property also have a pre-emption right. Therefore, an owner wishing to sell his or her ownership portion is required to also notify the entities with a pending ownership claim of the content of the offer received.

The reason the Supreme Court came to this conclusion is that the ownership comes into existence on the date of registration, effective as of the date of submission of the request for the registration of ownership title. Thus, a marginal note not only proves the commencement of the registration proceeding before the land registry but the date of the marginal note will be the date the ownership title is established. However, it is not certain that an entity that submitted a request for the registration of ownership title will indeed become an owner. It may be that the request is not suitable for the registration of ownership.

There is definitely a pending legal situation between the submission of the registration request (i.e. the date of the marginal note) and the land registry's resolution on the registration request. In the Supreme Court's view, the owner wishing to sell its ownership portion is obliged to notify the registered co-owners and those who have a pending ownership claim of the purchase offer received. An entity that has a pending ownership claim will be able to exercise its pre-emption right, but only if its ownership is registered in the land registry within the period of time open for the entity to accept the offer. By the same token, if the owner wishing to sell its ownership portion fails to notify the entity with a pending ownership claim, the entity with pending ownership claim will be able to exercise its pre-emption right only if its ownership is registered in the land registry within the time generally open for accepting the offer from the date the entity became aware of the purchase offer.

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*For more information, please contact:*

[info@szecskay.com](mailto:info@szecskay.com)

H-1055 Budapest, Kossuth tér 16-17  
(Mail: H 1245 Budapest Pf/POB 1228)

Hungary

Tel: +36 (1) 472 3000 • Fax +36 (1) 472 3001

[www.szecskay.com](http://www.szecskay.com)