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NORTH MACEDONIA

Beyond the Title Deed:

Key Legal Risks in Commercial Real Estate Transactions in North Macedonia

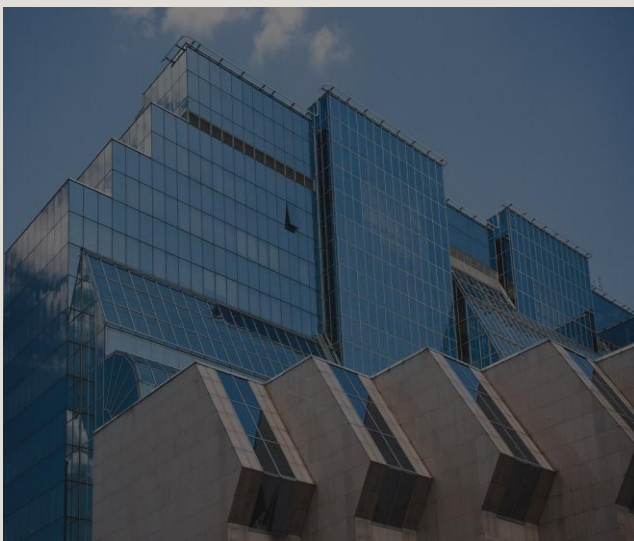
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A plot of land may look perfect for a commercial project, but the legal picture can tell a different story.

In North Macedonia, commercial properties often come with more complexity than meets the eye. A title deed may list several co-owners, including the Republic of North Macedonia, alongside mortgages, court annotations or other restrictions that were never mentioned during negotiations.

These issues do not necessarily prevent a deal from going ahead, but they can affect its structure, timing and legal certainty. The first question is therefore not just what the seller is offering, but **who has the legal right to sell or lease the property.**



1

CO-OWNERSHIP: WHO NEEDS TO SIGN?

When several people own the same property, each holds an ideal share rather than a physically defined part of the land. This matters when an investor intends to develop a supermarket, shopping centre or logistics facility.

There are three key considerations:

- **Sale of the entire property:** All co-owners must participate in the sale. A co-owner may sell their own share, but acquiring only part of the ownership may prevent the investor from implementing the planned project.
- **Pre-emption rights:** Other co-owners generally have a statutory right of first refusal if one owner intends to sell their share to a third party. The required procedure must be followed before the transfer.
- **Leasing:** A long-term lease for a commercial project generally goes beyond ordinary management and requires the consent of all co-owners.

In practice, identifying all necessary parties can be one of the biggest challenges. Co-owners may live abroad, have passed away or simply refuse to cooperate. Due diligence should therefore establish not only who owns the property, but also whether everyone can legally participate in the transaction.

2

WHEN THE STATE OWNS PART OF THE PROPERTY

If the Republic of North Macedonia owns a share in the land, the transaction becomes more complex. The state's share cannot simply be acquired through private negotiations. The disposal of state-owned construction land generally requires a public tender, while direct allocation is permitted only in legally defined circumstances.

This means that the transaction may involve two parallel processes: negotiations with private co-owners and a separate public procedure for acquiring the state's share.

The pre-contract should reflect this from the beginning. For example, the purchase of private shares may be conditional on acquiring the state's share. Alternatively, the parties may explore parcellation, if permitted by the applicable urban planning documents.

The important point is to confirm that the entire plot can realistically be acquired before committing to the transaction.

3

MORTGAGES: THE RISK THAT STAYS WITH THE PROPERTY

A mortgage generally follows the property, not the owner. If an investor purchases mortgaged land, the mortgagee may still enforce its security if the secured obligations remain unpaid.

This is equally important for commercial leases. A lease registered after a mortgage may not adequately protect the tenant against enforcement proceedings. A tenant who has invested heavily in developing or fitting out the premises could therefore lose the right to use them.

Several solutions can help manage this risk:

- **Mortgage deletion at closing:** Part of the purchase price is paid directly to the mortgagee in exchange for its written consent to deregistration.
- **Escrow or notarial deposit:** The relevant amount is held until the mortgage is deleted from the Cadastre.
- **Mortgagee consent for leases:** Tenants should consider obtaining the mortgagee's consent and, where possible, an undertaking protecting their right to use the property in the event of enforcement.

The right approach depends on the transaction structure, but the mortgage should always be addressed before the investor becomes financially exposed.

4

OTHER ENTRIES THAT DESERVE ATTENTION

The encumbrances section of the title deed may reveal restrictions and third-party rights beyond mortgages. These include:

- **Pending disputes:** An annotation of a dispute alerts buyers to ongoing litigation that may affect ownership or the use of the property.
- **Prohibitions on disposal or encumbrance:** These may arise from court measures, financing arrangements or other legal obligations and may restrict the transfer of the property.
- **Easements and third-party rights:** Rights of way, utility corridors, power lines and pipelines can limit access or restrict construction.
- **Enforcement entries and pre-registrations:** These may indicate existing claims or rights that require further investigation.

Identifying these entries is only the first step. Each should be traced to its underlying document and assessed in light of the planned project. For example, an easement along the edge of a plot may have little practical impact, while one crossing the intended building footprint could significantly affect development.

5

TURNING DUE DILIGENCE FINDINGS INTO
CONTRACTUAL PROTECTION

Once ownership issues and encumbrances have been identified, the pre-contract should clearly allocate the relevant risks and obligations.

Depending on the transaction, it should address:

- **Participation of all necessary parties**, including co-owners and duly authorised representatives, while respecting applicable pre-emption rights.
- **Conditions precedent** requiring ownership issues to be resolved and unwanted encumbrances deleted before completion.
- **Clear seller obligations and deadlines** for deleting mortgages, resolving disputes or completing inheritance proceedings.
- **Secure payment arrangements**, such as direct payments to mortgagees, escrow or notarial deposits.
- **Representations, warranties and indemnities** covering ownership, disputes, third-party rights and undisclosed claims.
- **Long-stop dates and termination rights** allowing the investor to withdraw if the agreed conditions are not met within the specified period.

These provisions turn due diligence findings into practical contractual safeguards, rather than leaving the investor exposed to unresolved risks.

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THE BOTTOM LINE

Co-ownership and registered encumbrances are common features of commercial real estate transactions in North Macedonia. They are not necessarily deal-breakers, but they require careful planning.

A good due diligence exercise should answer three essential questions: **Who needs to sign? What needs to be resolved or approved? And in what order should the transaction proceed?**

With these answers in place, the pre-contract can secure the property while protecting the investor's money until the agreed ownership and legal conditions are satisfied. Ultimately, finding the right location is only part of the deal. The property must also be legally ready for the project.

GET IN TOUCH

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