

# ***NEWSLETTER***

September 2015

Dear Sirs,

we would like to kindly inform you that the Supreme Court in its judgment of the 5<sup>th</sup> of December 2013 (file no V CSK 33/13) took the position that Art. 764<sup>2</sup> of the Civil Code has the proper application to the agency contract in real estate sale. This is extremely important, because there is an ongoing dispute in doctrine as to the legal nature of the agency contract in real estate sale.

In the commented judgment, the Supreme Court pointed out that the legal nature of the agency contract in real estate sale, as provided for in Art. 179 - 183 Real Estate Management Act, is not perceived unequivocally. However, there is an agreement that in the cited provisions, the contract has not been settled in a comprehensive manner. This means that in cases not regulated, you must apply to the contract relevant provisions regulating similar named contracts.

**The Court took the view that the agency contract in real estate sale is closest to the agency contract regulated by the Civil Code.** When it comes to the agency contract it is a question of making factual, not legal, actions as it is in the service contract, and besides, the agent acts independently and has no obligation to comply with the recommendations of ordering party. The immediate objective of the intermediary is not a call to a specific legal effect, but creating the conditions in which the contract is possible with the participation of the interested parties. Moreover, the right to remuneration intermediary acquires only when the conditions created by him result in a contract. **This argues for appropriate use, in cases not regulated, to the agency contract provisions relating to agency contract and not a service contract.**

Therefore, in the commented judgment, the Supreme Court presented the view that respectively art. 764<sup>2</sup> of the Civil Code applies to the agency contract in real estate sale, according to which an agency contract, even it was concluded for a fixed period, may be terminated without the period of termination also in the event of unusual circumstances. Thus, agency contract, signed up for a fixed period, may be terminated due to the occurrence of extraordinary change in circumstances. It is essential the fact that in the Court's opinion, groundless extraordinary termination is not affected by the ineffectiveness sanction - a party who terminates exposes only on liability for damages pursuant to Art. 471 of the Civil Code.

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