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# PECULIARITIES REGARDING THE CONTRACT FOR THE SALE OF ANOTHER'S PROPERTY. PRACTICAL APPLICABILITY AND PROPOSALS FOR *LEGE FERENDA*

Gabriela Teodoru\*

## **Abstract**

*The contract for the sale of another's property represents a complex legal institution, the validity of which is conditioned by a series of essential elements, considering the particularity of its object. This article analyzes these conditions in detail, referring to the fundamental principles of Romanian civil law and to relevant doctrinal and jurisprudential interpretations. Aspects such as the consent of the parties, the capacity to contract, the determined and lawful object, and the lawful and moral cause will be explored, with special attention to the implications of the seller's lack of ownership. The aim of the paper is to provide a clear and concise perspective on the legal requirements for the validity of this specific type of contract.*

*This scientific article analyzes the current regulation of the contract for the sale of another's property in Romanian law, identifying aspects that require clarification and improvement through legislative intervention (lege ferenda). By comparing with solutions adopted in other European civil law systems and from the perspective of the need to ensure a fair balance between the protection of the real owner and the legal certainty of transactions, the article formulates a series of concrete proposals for the modification and completion of existing legal provisions.*

**Keywords:** *contract for the sale of another's property, rei alienae, conditions of validity, procuring the good, moment of transfer, nemo dat quod non habet, lack of ownership, Romanian civil law.*

**JEL Classification:** *K11, K12, K15*

## **1. Preliminaries**

The contract of sale is defined in the Romanian Civil Code as the agreement of wills whereby the seller undertakes to transfer to the buyer the ownership of a good or another right, and the buyer undertakes to pay the corresponding price. The particularity of the contract for the sale of another's property lies in the fact that, at the time of concluding the agreement, the seller is not the owner of the good that forms the object of their prestation. This situation generates a series of specific legal considerations regarding the validity of the contract.

For any contract, including the contract for the sale of another's property, to be valid, the essential conditions provided by Article 1179 of the Civil Code must be cumulatively met: the capacity to contract, the valid consent of the parties, a determined and lawful object, and a lawful and moral cause. In the context of the sale of another's property, the analysis of these conditions acquires particular nuances. The peculiarity of this type of contract consists in the fact that the seller's lack of ownership at the time of concluding the agreement does not, in itself, entail absolute nullity.

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However, aspects such as defects of consent determined by an error regarding the seller's quality, the impossibility of the object (if the good is inalienable), or an illicit and immoral cause (the fraudulent intention to prejudice the real owner) can affect the validity of the contract.

A detailed understanding of the essential conditions for validity and the specific implications of the sale of another's property is crucial for legal practice, providing a clear normative framework for the analysis and resolution of disputes generated by this type of contract. The fundamental principles of Romanian civil law ensure a balance between the protection of the good-faith buyer and the respect for the property rights of the third party.

## **2. Essential Conditions for the Validity of the Contract for the Sale of Another's Property**

For any contract, including the contract for the sale of another's property, to be valid, the essential conditions provided by Article 1179 of the Civil Code must be cumulatively met: the capacity to contract, the valid consent of the parties, a determined and lawful object, and a lawful and moral cause. In the context of the sale of another's property, the analysis of these conditions acquires particular nuances.

### *2.1. Capacity to Contract*

The general rules regarding the capacity to contract are also applicable in the case of the sale of another's property. Both parties, seller and buyer, must have full capacity to act. Incapacities provided by law, such as minority or judicial interdiction, entail the relative nullity of the contract, with legal exceptions. The seller's lack of ownership does not, in principle, affect their capacity to contract, as the assumed obligation is to procure the good and transfer it to the buyer subsequently.

In Romanian civil law, the capacity to contract is defined as a person's aptitude to conclude legal acts, acquiring rights and assuming obligations. This capacity is governed by the provisions of Article 34 and following of the Civil Code, which distinguish between legal capacity (the general aptitude to have rights and obligations) and the capacity to act (the aptitude to exercise rights and assume obligations by concluding legal acts). For a contract for the sale of another's property to be valid, both parties – the seller and the buyer – must meet the legal requirements regarding capacity.

Legal capacity is recognized for all natural persons from birth to death and for all legal persons from the date of their establishment until their termination. In the context of the sale of another's property, legal capacity does not raise specific issues. Both the seller (even if they are not the owner of the good) and the buyer must have legal capacity to be parties to a contract. This capacity allows them to be holders of the rights and obligations arising from the contract, such as the seller's obligation to procure and transfer the good and the buyer's obligation to pay the price.

The capacity to act, i.e., the aptitude to conclude valid legal acts, is full for natural persons who have reached the age of 18 and have not been placed under judicial interdiction. Persons who do not have full capacity to act (minors and judicially interdicted persons) can conclude legal acts only through a legal representative (parents, guardian) or with their consent, under the conditions provided by law. The application of these rules to the contract for the sale of another's property is essential. The seller must have full capacity to act to be able to validly obligate themselves to procure the good and transfer it to the buyer. If the seller is a minor or

placed under interdiction, the contract concluded personally is voidable (relative nullity), and can be confirmed by the legal representative or by the seller who has become capable, under the conditions of the law. The seller's lack of ownership does not directly influence the analysis of their capacity to act. Similarly, the buyer must have full capacity to act to be able to validly obligate themselves to pay the price and acquire ownership (even if this is achieved subsequently). The buyer's incapacity also entails the relative nullity of the contract, with the possibility of confirmation.

In addition to the general incapacities related to the lack of full capacity to act, the law also provides for special incapacities to conclude certain legal acts. These incapacities may concern certain categories of persons or certain types of goods. In the context of the sale of another's property, it must be analyzed whether there are special incapacities that could affect the validity of the contract. For example, Article 1654 and following of the Civil Code provide for special incapacities to buy for certain categories of persons (e.g., mandataries, administrators of state property, public officials etc.) in connection with certain goods. If the buyer is in such a situation, the contract for the sale of another's property could be affected by absolute nullity, depending on the nature of the incapacity and the applicable legal provisions.

It is important to emphasize that these special incapacities usually concern the act of sale-purchase itself and are not specific to the sale of another's property. They would apply regardless of whether the seller is or is not the owner of the good at the time of contracting.

Although the seller's lack of ownership does not directly affect their capacity to contract, there may be indirect interactions that need to be considered:

- **Erroneous representation of quality:** If an incapable seller (e.g., a minor) presents themselves as the owner and concludes a contract for the sale of another's property, two grounds for annulment may accumulate: the seller's incapacity and the buyer's error regarding the essential quality of the seller (the capacity to dispose of the good).

- **Actions of the legal representative:** If a minor or a judicially interdicted person sells another's property through their legal representative, the act is valid if it is concluded in compliance with the legal provisions regarding the acts of disposal of incapable persons (judicial authorization etc.).

Failure to comply with the rules regarding the capacity to contract generally entails the relative nullity of the contract (Article 1246 of the Civil Code). This means that the legal act is valid until it is annulled by a court decision, at the request of the protected person or their legal representative. The contract can be subsequently confirmed by the person who had limited capacity or by the legal representative, thus removing the cause of nullity.

In the case of special incapacities, the sanction may be absolute nullity, depending on the legal provisions that establish the incapacity.

The good or bad faith of the other contracting party (in relation to the incapable person) may be relevant in certain situations, especially regarding the effects of the restitution of prestations in the event of the contract's annulment. However, the fundamental principle remains the protection of the person lacking full capacity to act.

A rigorous analysis of the parties' capacity is essential to ensure the validity and legal certainty of the contract for the sale of another's property, in accordance with the fundamental principles of Romanian civil law regarding the protection of persons lacking full capacity to act and the observance of mandatory legal provisions.

### *2.2 Valid Consent of the Parties*

In Romanian civil law, a contract is the result of the agreement of wills between two or more persons with the intention of establishing, modifying, or extinguishing a legal relationship (Article 1166 paragraph 1 of the Civil Code). Consent, as a manifestation of individualized, externalized will, represents the foundation of any valid contract. In the specific case of the contract for the sale of another's property, where the seller does not hold the right of ownership over the good at the time of contracting, the analysis of the consent of both parties becomes crucial to determine the validity of the agreement and to understand the assumed obligations.

The consent of both parties must be free, unvitiated, and expressed with the intention of producing legal effects. Defects of consent (error, fraud, and duress) can affect the validity of the contract for the sale of another's property under the same conditions as in the case of any other contract.

The seller's consent in the contract for the sale of another's property is manifested by the intention to obligate themselves to perform the promised prestation, which does not consist of an immediate transfer of ownership (impossible to achieve in the absence of this right), but in assuming the obligation to take the necessary steps for the property to be transferred to the buyer subsequently. This obligation may include purchasing the good, obtaining the owner's consent, or ratifying the sale. For this consent to be valid, it must meet the general conditions: it must be serious, free, and expressed knowingly. The lack of ownership does not, in itself, affect the validity of the seller's consent to obligate themselves to such a prestation.

The buyer's consent in the contract for the sale of another's property is directly influenced by whether they know or do not know that the seller is not the owner of the good. From this perspective, two fundamental situations can be distinguished:

- The buyer knows about the seller's lack of ownership: In this hypothesis, the buyer consciously agrees to contract with a person who is not the owner, being fully informed about the legal status of the good. Their consent is directed towards the seller's obligation to procure the good and transfer it subsequently. The contract is valid, and the buyer will not be able to subsequently invoke an error regarding the seller's quality to request the annulment of the contract.

- The buyer does not know about the seller's lack of ownership (Error): If the buyer is misled by the seller or is in a spontaneous error, believing that the seller is the owner of the good, their consent could be vitiated by error regarding an essential quality of the seller (the capacity to transfer ownership). This error could lead to the annulment of the contract, under the conditions provided by law. To lead to the annulment of the contract (relative nullity), the error must be essential (determinative for the conclusion of the act) and excusable (the buyer has taken reasonable steps to verify the legal status of the good). The seller has an implicit obligation to correctly inform the buyer about the legal status of the good, including whether they are not the owner. Failure to comply with this obligation may constitute fraud by omission, vitiating the buyer's consent. If the seller uses fraudulent means (misleading through false statements or omission) to induce the buyer to contract, knowing that they are not the owner, the buyer's consent is also vitiated by fraud. The buyer can request the annulment of the contract and, possibly, damages<sup>1</sup>.

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<sup>1</sup> High Court of Cassation and Justice (2025) Decision no. 279/14.02.2023, Available at <https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=203164#highlight=##>, Accessed on 09.04.2025.

The principle of good faith requires that the parties act with loyalty and communicate the information relevant to the decision to contract. The good or bad faith of the parties at the time of expressing consent has significant implications for the validity and effects of the contract for the sale of another's property.

If the buyer contracted in good faith, believing that the seller was the owner, the law offers them additional protection. If the seller fails to transfer ownership, the good-faith buyer can request the annulment of the contract (Article 1684 of the Civil Code), having the possibility to obtain the restitution of the price and damages.

If the buyer knows at the time of contracting that the seller is not the owner, but accepts this situation, they will not be able to subsequently invoke error to request the annulment of the contract. Their consent was given knowingly.

If the seller knows that they are not the owner and does not inform the buyer or, moreover, misleads them, the buyer's consent is vitiated (by provoked error or fraud). This leads to the possibility of the contract's annulment and obligates the seller to pay damages.

A rigorous scientific approach to consent in the sale of *rei alienae* requires a detailed analysis of the parties' intention, the information available at the time of contracting, and the steps taken by the buyer. The fundamental principles of civil law, such as contractual freedom and good faith, govern the formation of a valid and equitable agreement of wills, even in the particular situation of the sale of another's property.

### 2.3 *Object of the Contract: Determined and Lawful*

The object of the contract for the sale of another's property represents a pivotal point in the analysis of the validity and effects of this specific type of agreement. Far from being a simple material error, the situation in which the seller is not the owner of the sold good at the time of contracting generates complex implications regarding the determination, lawfulness, and possibility of the object.

In the general theory of the contract of sale, the object is dual, referring both to the seller's prestation (the transfer of ownership or another right) and to the buyer's prestation (the payment of the price). In the context of the sale of another's property (*rei alienae*), the analysis of the object focuses particularly on the alienated good, considering the seller's lack of ownership at the time of the formation of the agreement of wills. This situation does not automatically lead to the impossibility or unlawfulness of the object, but rather generates a specific configuration of the obligations assumed by the parties.

For a thorough understanding of the object in the sale of *rei alienae*, the distinction between the material object of the contract (the good itself) and the object of the seller's obligation is essential. In the case of the sale of another's property, the material object is an individually determined or determinable good that, at the time of contracting, is not owned by the seller. The precise identification of this good is crucial for the validity of the contract, and the general rules regarding the determination of the object apply (Article 1226 of the Civil Code). The lack of ownership in the seller's patrimony does not, in principle, affect the determined or determinable character of the good. The object of the seller's obligation in the contract for the sale of another's property is not the immediate transfer of ownership (impossible for a non-owner to achieve), but the assumption of an obligation to do, consisting of the necessary steps for the ownership of the good to be transferred to the buyer subsequently. This obligation may include:

- Purchasing the good from the true owner: The seller undertakes to become the owner of the good in order to be able to subsequently transfer it to the buyer.
- Obtaining the owner's consent for the sale: The seller undertakes to obtain the owner's agreement for the sale to be valid and opposable.
- Ratification of the sale by the owner: In certain situations, the initial sale can be subsequently ratified by the true owner, consolidating the transfer of ownership.

Therefore, the immediate object of the seller's obligation is not a current transfer of a real right, but an action intended to lead to such a transfer in the future. This perspective is essential to distinguish the sale of *rei alienae* from situations of initial impossibility of the object.

The lawfulness of the object refers to its conformity with the law, public order, and good morals (Article 1227 of the Civil Code). In the context of the sale of another's property, lawfulness must be analyzed both from the perspective of the material good and from the perspective of the obligation assumed by the seller. If the good itself is outside the sphere of civil circulation (e.g., drugs, illegally possessed weapons) or is inalienable by its nature or by law (e.g., goods from the public domain without complying with the legal procedures for declassification), the contract for the sale of another's property will be absolutely null for the unlawfulness of the object, regardless of the good or bad faith of the parties. The seller's obligation to procure the good and transfer it to the buyer is, in principle, perfectly lawful. Civil law does not expressly prohibit contracting for a good that is not currently owned by the debtor, as long as the debtor assumes the obligation to procure it subsequently (Article 1230 of the Civil Code). However, unlawfulness could arise if the intention of both parties at the time of contracting is to defraud the rights of the true owner or to violate other mandatory legal provisions. For example, the sale of a seized good, with the buyer's complicity to evade the precautionary measure, could be considered unlawful from the perspective of the cause and the object.

The possibility of the object refers to the material and legal capacity to perform the assumed prestation (Article 1228 of the Civil Code). In the sale of another's property, possibility must be analyzed in relation to the seller's obligation to procure and transfer the good. If, at the time of concluding the contract, the procurement and transfer of the good are impossible *per se* (e.g., the good is non-existent, completely destroyed), the contract is absolutely null for the impossibility of the object. This situation is distinguished from the sale of another's property, where the impossibility is not intrinsic to the good, but refers to the current lack of ownership in the seller's patrimony. The sale of another's property falls within a form of relative initial impossibility, in the sense that the seller does not have the current capacity to transfer ownership. However, this impossibility can be overcome by the seller's subsequent actions (acquisition, obtaining consent etc.). Therefore, the contract is not absolutely null for the impossibility of the object, but generates obligations for the seller in order to perform the promised prestation.

Doctrine<sup>2</sup> and jurisprudence are convergent in considering that the sale of another's property is not affected by absolute nullity for the impossibility of the object, precisely because the seller's main obligation is to take the necessary steps to be able to transfer ownership subsequently.

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<sup>2</sup> Chirică, D (2013). The Sale of Another's Property – Between the Old and New Regulation of the Romanian Civil Code. In the Volume "In honorem Ion Deleanu. Law and Rights – Tradition and Modernity", Bucharest: Universul Juridic.

Although the main analysis of the object in the sale of another's property focuses on the good, the price remains an essential element of the contract of sale (Article 1650 of the Civil Code). The price must be determined or determinable, sincere, and serious. The particularities related to the current lack of ownership in the seller's patrimony do not, in principle, affect the rules regarding the determination and validity of the price. The buyer undertakes to pay the agreed price in exchange for acquiring ownership of the good, even if this acquisition is postponed or conditioned by the seller's actions.

In conclusion, the object of the contract for the sale of another's property presents a complex legal nature that goes beyond the simple lack of ownership in the seller's patrimony. The essence of the object of the seller's obligation consists of an obligation to do, intended to lead to the transfer of ownership to the buyer. The validity of the contract is conditioned by compliance with the general rules regarding the determination, lawfulness, and possibility of the object, analyzed in the specific context of the obligations assumed by the parties. The principles of contractual freedom and good faith complete the legal framework, influencing the interpretation and effects of this particular type of contract.

A thorough understanding of the nuances related to the object of the contract for the sale of another's property is fundamental for the correct application of civil law norms and for ensuring legal certainty in commercial transactions.

#### *2.4 Cause of the Contract: Lawful and Moral*

The cause of the contract represents the determining motive that led each party to express their consent. The cause must be lawful (not contrary to the law, public order, or good morals) and moral (in accordance with fundamental ethical values).

In the case of the sale of another's property, the buyer's cause is obtaining ownership of the good, and the seller's cause is obtaining the agreed price, assuming the obligation to procure and transfer the good. These causes are, in principle, lawful and moral.

According to Article 1236 of the Civil Code, the cause is illicit when it is contrary to the law, public order, or good morals. In the context of the sale of another's property, the lawfulness of the cause must be analyzed from the perspective of the intention of both parties at the time of contracting. If both parties contract with the intention of circumventing the rights of the true owner, illegally dispossessing them, or causing them harm, the cause of the contract becomes illicit and entails its absolute nullity. For example, a contract by which a stolen good is "sold," with the buyer's complicity, aiming to conceal its illicit origin, would be null for illicit cause. In certain circumstances, the sale of another's property could be considered illicit if the purpose pursued by the seller is blatant speculation, based on misleading the buyer and on an unjustified profit, to the detriment of third parties' rights. The assessment of the illicit nature of speculation depends on the specific circumstances of each case and on jurisprudential interpretations. If the sale of another's property is carried out in violation of mandatory legal provisions governing the transfer of certain categories of goods, the cause could be considered illicit in relation to the law.

The cause is immoral when it is contrary to good morals (Article 1236 paragraph 2 of the Civil Code). Good morals represent a set of unwritten but generally accepted social conduct rules within a certain community at a given time. If the seller takes advantage of the buyer's vulnerability, lack of experience, or state of need to induce them to contract for a good they know they do not own, at a disproportionate price, the cause could be considered immoral. The sale of another's property carried out with disregard for the rights of the real owner or

with the intention of unfairly profiting from a given situation could be considered immoral, entailing the absolute nullity of the contract.

The simple lack of ownership by the seller at the time of concluding the contract does not automatically make the cause illicit or immoral. The contract for the sale of another's property is recognized by civil law, generating specific obligations for the seller. The cause of the contract remains, for the seller, obtaining the price, and for the buyer, acquiring ownership, even if this acquisition is mediated by the seller's subsequent actions.

Although the cause is a condition of validity at the time of the contract's formation, it also influences its subsequent effects. If an illicit or immoral cause is established, the contract is absolutely null, and the effects produced are retroactively annulled.

In the case of a valid sale of another's property (where the cause is lawful and moral), the seller's obligation to procure the good and transfer it is essential. If the seller does not fulfill this obligation, the buyer can request the termination of the contract, considering the non-achievement of the purpose for which they contracted (their cause).

According to Article 1238 of the Civil Code, the cause is presumed to be lawful and moral until proven otherwise. The burden of proving the illicit or immoral nature of the cause lies with the party invoking this nullity. In the context of the sale of another's property, proving fraudulent intent or illicit speculation can be difficult, requiring the analysis of the specific circumstances of the contracting and the evidence presented in the case.

### *2.5 Form of the Contract for the Sale of Another's Property*

The form of concluding the contract for the sale of another's property represents an essential aspect for its validity and opposability. Although the principle of consensualism governs Romanian civil law, certain categories of contracts, including those transferring real rights over immovable property, are subject to specific form requirements.

In the case of the sale of movable goods, including another's property, the principle of consensualism applies fully. The contract is considered validly concluded by the simple agreement of wills between the seller and the buyer regarding the good and the price, without the need for a specific written or authentic form. This is valid even if the seller is not the owner of the good at the time of contracting, their obligation being to procure it subsequently and transfer it to the buyer (Article 1683 paragraph 1 of the Civil Code). However, although the written form is not a condition of validity for the sale of movable goods, it can be useful *ad probationem*, to facilitate the proof of the existence and content of the contract in case of litigation (Article 1191 of the Civil Code).

In contrast to the sale of movable goods, the sale of immovable property is subject to a rigorous legal formalism. According to Article 1244 of the Civil Code, legal acts by which real rights over immovable property are constituted, transferred, or extinguished must be concluded in authentic form, under the sanction of absolute nullity. This *ad validitatem* form requirement is mandatory and applies to all contracts transferring ownership of immovable property, including the contract for the sale of immovable property belonging to another.

Therefore, in our opinion, if the object of the contract for the sale of another's property is an immovable, the agreement of wills of the parties must be expressed through an authentic notarial deed to be valid. A simple private written document is not sufficient and entails the absolute nullity of the contract (Article 1246 of the Civil Code).

The scientific argumentation regarding the registration in the Land Registry of the contract for the sale of another's property for an immovable and the effects on the true owner

requires a complex analysis, based on the principles of real estate publicity and the specific regulations of the Romanian Civil Code. Certain legal acts by which personal patrimonial rights are born, originating from obligatory legal relationships concerning immovable property registered in the Land Registry, are subject to notation<sup>3</sup>.

According to Article 1683 paragraph (1) of the Civil Code, the contract for the sale of another's property is valid. The seller assumes the obligation to ensure the transfer of the right of ownership from its holder to the buyer. This obligation can be fulfilled in various ways: the subsequent acquisition of the good by the seller, the ratification of the sale by the owner, or any other direct or indirect means that procures the buyer with the ownership of the good (Article 1683 paragraph 3 of the Civil Code).

In the Land Registry system in Romania, governed by the principles established by the Civil Code (Article 885 and following), registration has a constitutive role for real rights over immovable property. The principles relevant to our discussion are:

- The principle of absolute probative force of registration: What is registered in the Land Registry is presumed accurate until proven otherwise (Article 886 of the Civil Code).
- The principle of material publicity (constitutive effect): Real rights over immovable property are constituted, modified, or extinguished only by registration in the Land Registry (Article 885 paragraph 1 of the Civil Code).
- The principle of opposability: Real rights registered in the Land Registry are opposable to third parties from the date of registration of the application for registration (Article 901 paragraph 1 of the Civil Code).
- The principle of good faith: Whoever acquires in good faith a real right over immovable property from an apparent owner (the one registered in the Land Registry) is protected, if the apparent owner's registration was valid at the time of registration of the acquisition request (Article 901 paragraph 2 of the Civil Code).

Considering that at the time of concluding the contract for the sale of another's property the seller is not the owner, the registration of the right of ownership in favor of the buyer is not immediately possible. The Land Registry registrar will reject such a request because there is no valid title for the transfer of the right of ownership from the seller to the buyer at that time.

However, the question arises whether the existence of the contract for the sale of another's property could be noted in the Land Registry. Notation aims to inform third parties about certain legal acts or facts concerning the immovable property (Article 902 of the Civil Code).

Arguments against notation: Notating a contract for the sale of another's property could create an appearance of right in favor of the buyer and could unjustifiably affect the true owner's right of disposal. The latter could be prevented from freely disposing of their property due to the existence of a notation suggesting a potential alienation. Also, the notation would not confer a real right over the immovable property to the buyer, as long as the seller does not become the owner and does not validly transfer the right.

Arguments for notation (limited and controversial): It could be argued that notation would serve as a form of publicity for the obligation assumed by the seller and could protect the good-faith buyer in case the seller would try to conclude similar contracts with other potential buyers. However, this notation would not affect the property right of the third party.

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<sup>3</sup> Bîrsan, C. (2013). Civil Law. Main Real Rights – in the Regulation of the New Civil Code, Bucharest: Hamangiu, p. 473.

In general, doctrine<sup>4</sup> and legal practice are reluctant to accept the notation in the Land Registry of the contract for the sale of another's property, considering that it would bring confusion and would unjustifiably restrict the true owner's right of disposal. The contract for the sale of another's property produces binding effects only between the contracting parties (seller and buyer), without affecting the real right of the third-party owner.

The contract for the sale of another's property, even if it were noted in the Land Registry (a rather unlikely hypothesis), does not produce any effect on the property right of the true owner, as long as the latter was not a party to the contract and did not express their consent regarding the sale. The registration of the right of ownership in the Land Registry in favor of the true owner continues to produce full effects. They retain all the prerogatives of the right of ownership (*usus, fructus, abusus*). The contract of sale concluded by a non-owner is *res inter alios acta* for the true owner and is not opposable to them. The owner has no obligation towards the buyer of their property. If the buyer were to take possession of the property, the true owner has the action for recovery (*revendicare*) at their disposal (Article 563 of the Civil Code) to recover their property, not being bound by the contract concluded by a third party. The buyer's good faith could be relevant regarding the restitution of fruits or expenses made with the property, but it does not prevent the owner's action for recovery.

In conclusion, the registration in the Land Registry of the contract for the sale of another's property, in the sense of noting the transfer of the right of ownership in favor of the buyer, is not possible as long as the seller is not the owner of the immovable property. The Land Registry registrar will reject such a request due to the lack of a valid title for transfer.

Also, noting the existence of the contract for the sale of another's property in the Land Registry is generally considered inappropriate and risky,

### **3. Effects of the Contract for the Sale of Another's Property**

The contract for the sale of another's property, although valid in principle according to Romanian civil law, generates specific effects, distinct from those of the sale of one's own property. This paper explores these effects in depth, analyzing the seller's obligations (to procure and transfer the good), the buyer's rights (including the possibility of termination or annulment), the legal situation of the true owner (to whom the contract is not opposable), as well as the implications of the good or bad faith of the parties. The aim is to provide a rigorous scientific analysis of the legal dynamics created by the sale of *rei alienae* and the legal mechanisms intended to balance the interests of the parties involved.

The contract for the sale of another's property, implicitly regulated by Articles 1683-1685 of the Civil Code, is distinguished from the ordinary sale by the fact that the seller is not the owner of the good at the time of concluding the agreement. This particularity significantly influences the effects of the contract, creating a set of specific obligations and rights for the seller and the buyer, without affecting, in principle, the rights of the true owner.

#### *3.1 Rights and Obligations of the Seller in the Contract for the Sale of Another's Property*

The main effect of the contract for the sale of another's property consists in the birth of obligations for the seller, oriented towards achieving the transfer of ownership to the buyer. The main and defining obligation of the seller in the contract for the sale of another's property

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<sup>4</sup> Togan, R. (2017). Correlation of Certain Land Registry Provisions with Other Institutions of the Civil Code. Available at [https://abcjuridic.ro/corelarea-unor-dispozitii-de-carte-funciara-cu-alte-institutii-ale-codului-civil/#\\_ftn18](https://abcjuridic.ro/corelarea-unor-dispozitii-de-carte-funciara-cu-alte-institutii-ale-codului-civil/#_ftn18) Accessed: 10.04.2025.

is to take all necessary steps for the ownership of the good to be transferred to the buyer. This complex obligation involves two interdependent aspects: the obligation to procure the good and the obligation to ensure the transfer of the right of ownership. The seller must actively act to legally obtain the right of ownership over the good. The ways of fulfilling this obligation can be diverse and depend on the specific circumstances. Acquiring the good from the true owner is the most direct way. The seller must conclude a contract of sale-purchase with the current owner of the good. Another way is that by which the seller obtains the owner's agreement for the sale concluded with the buyer to be ratified or to produce effects directly in the owner's patrimony. Also, if the seller becomes the owner's heir, they will acquire ownership and will be able to transfer it to the buyer. Any other legal mechanism (e.g., usucaption completed after the contract, expropriation followed by reacquisition etc.) that would lead to the good entering the seller's ownership can serve to fulfill this obligation. Once the seller has acquired ownership (or has the legal means for transfer), they are obliged to make the effective transfer to the buyer, according to the nature of the good (delivery for movables, registration in the Land Registry for immovables).

The seller's obligation to procure the good and transfer the right of ownership is considered an obligation of result. The seller does not only obligate themselves to exercise diligence, but to effectively ensure the transfer of the right of ownership. If the transfer does not take place due to the seller's fault, the latter will be liable for the non-performance of the obligation.

The contract for the sale of another's property may stipulate a specific term for the fulfillment of the obligation to procure and transfer. In the absence of a term, the obligation becomes due according to the general rules (Article 1422 of the Civil Code), taking into account the nature of the obligation and the specific circumstances. The buyer can put the seller in default if the latter does not take the necessary steps or fails to achieve the transfer within a reasonable time.

The seller's failure to fulfill the obligation to procure and transfer the good entails various consequences for the buyer:

- Termination of the contract (Article 1683 paragraph 4 of the Civil Code): The buyer has the right to request the termination of the contract, with retroactive effect. The parties will be restored to the previous situation, the seller being obliged to return the received price.

- Damages (Article 1683 paragraph 4 of the Civil Code): In addition to termination, the buyer can request damages for the prejudice suffered as a result of the seller's non-performance of the obligation. These damages may include the loss suffered (*damnum emergens*) and the unrealized profit (*lucrum cessans*), to the extent that they are proven and are a direct and foreseeable consequence of the non-performance.

- Annulment of the contract for error (Article 1684 of the Civil Code): If the buyer was in good faith at the time of concluding the contract, believing that the seller was the owner, and this error was essential, they can request the annulment of the contract. The effect is similar to termination (restitution of prestations), but the legal basis is the defect of consent.

The seller of another's property is also bound by the obligation of warranty against eviction (Article 1695 and following of the Civil Code). Eviction consists of the buyer's loss of possession or ownership of the good, in whole or in part, due to a right of a third party. Eviction can most often originate from the true owner. If the true owner brings an action for recovery and wins the lawsuit, the buyer will be evicted. In this case, the seller will be obliged to compensate the buyer for the prejudice suffered (restitution of the price, the value of the