

# The immovable heritage decree and new sale annulments

The Immovable Heritage Decree of 12 July 2013 [Onroerenderfgoeddecreet] entered into force on 1 January 2015. Along with a harmonisation of the earlier rather fragmented rules for the heritage inventories and the enforcement of the various protection measures, the decree contains new duties to provide information that apply when selling or putting up for sale real properties, with accompanying sanctions.

With regard to protected properties, certain additional mentions have to be included at the moment that any advertising is done: both the fact that a protected property is involved and the "legal consequences that are associated with the protection" must be stated. This obligation also applies for intermediaries such as brokers or notaries public (art. 6.4.8).

The above mentions must also be included in the private and notarial deed relating to the sale, the establishment or transfer of a real right or the letting for more than nine years of a protected property (art. 6.4.9). This obligation applies for intermediaries as well. The decree explains that this is done "by incorporating into the deed a reference to chapter 6 of this decree and the protection decision".

In each private and notarial deed relating to the sale, the establishment or transfer of a real right or the letting for more than nine years of an inventoried property, each seller/lessor/... or his intermediary must state that the property has been registered in an inventory (art. 4.1.11). For buildings falling within the "inventoried heritage" class but which are not "protected", therefore, this fact does not have to be included in the advertising, only in the agreement.

There are penal sanctions for failing to fulfil these information duties: non-compliance with the duties referred to in articles 4.1.11 and 6.4.8 can be punished by an administrative fine of up to 10,000.00 EUR, to be multiplied by the surcharges [opdecimen].

The decree itself does not expressly provide for an annulment sanction for non-compliance with the aforementioned information duties. On the basis of the general rules concerning the information duties resting on sellers and the (sometimes very extensive) restrictions entailed by being registered on an inventory or having protected status, in many circumstances a buyer will be able to rely on a hidden defect, a precontractual fault, error and/or fraud if these information duties are not (or incorrectly) complied with.

In addition, article 6.4.9 provides, evidently only for protected properties, that a demand for annulment can no longer be filed if (i) the violation of the information duties was corrected by the time of the notarial deed and if (ii) the "party entitled to the information" in the notarial deed waives any right to demand annulment on the basis of this violation of the information duty.

For more information on this specific subject, please contact Ewoud Willaert (the author) and Marco Schoups (head of department).

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