

## Adapting rights in rem - Czech Republic

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#### 1 Which are the rights in rem that could arise from a succession under the law of this Member State?

The following rights in rem may arise from a succession:

- right to own property (its registration does not hinder other rights in rem),
- right to build (its registration – for immovable property – does not hinder other rights in rem),
- easement (its registration – for immovable property – does not hinder other rights in rem),
- mortgage (1) where a piece of land is charged with a mortgage, this may only be done with the agreement of the mortgagee, (2) transfer of ownership of a mortgaged aircraft requires the agreement of the mortgagee,
- lien,
- transfer of title as security of obligation (its registration – for cases entered in the public register (e.g. for immovable property, a share in a limited liability company, a trade mark) – does not hinder other rights in rem),
- right of pre-emption (registration of a contractually established right of pre-emption – for immovable property – does not hinder other rights in rem).

#### 2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

Possessory title:

- is registered for immovable property in the land registry, registration is mandatory. For the registration requirements and registration procedure see: <http://www.cuzk.cz/English/Cadastre-of-Real-Estate/Registration-into-the-Cadastre-of-Real-Estate/Registration-into-the-Cadastre-of-Real-Estate.aspx>.
- is registered for some movable property, e.g. for:
  - shares in a limited liability company (registered in the commercial register): registration is mandatory, for the registration requirements and registration procedure see: <https://or.justice.cz/ias/ui/podani>,
  - registered securities (registered in the Central Securities Depository): registration is mandatory, for the registration requirements and registration procedure see: <https://bit.ly/2wjka6>,

- applied designs, industrial designs, trademarks, patents, geographical designations and designations of origin (registered by the Industrial Property Office): registration is mandatory, for the registration requirements and registration procedure see: <http://www.upv.cz/cs/sluzby-uradu/formulare/vyplnitelne-pdf.html>,
- vehicles (registered in the vehicles register): registration is mandatory, for the registration requirements and registration procedure see: <https://www.mdcr.cz/Dokumenty/Silnicni-doprava/Registrace-vozidel/Jak-registrovat?returnl=/Dokumenty/Silnicni-doprava/Registrace-vozidel>,
- vessels (registered in the vessels register): registration is mandatory, for the registration requirements and registration procedure see: <https://www.mdcr.cz/Dokumenty/Namorni-urad-CR/Namorni-rejstrik-CR>,
- aircraft (registered in the aircraft register): registration is mandatory, for the registration requirements and registration procedure see:  
<http://www.caa.cz/letadla/letecky-rejstrik>.

Right to build: always registered for immovable property in the land registry, registration is mandatory, for the registration requirements and registration procedure see the right to own immovable property.

Easement: always registered for immovable property in the land registry, registration is mandatory, for the registration requirements and registration procedure see the right to own immovable property.

Lien:

- with respect to immovable property is registered in the land registry, registration is mandatory, for the registration requirements and registration procedure see the right to own immovable property,
- with respect to a share in a limited liability company is registered in the commercial register, registration is mandatory, for the registration requirements and registration procedure see the right to own a share in a limited liability company,
- with respect to registered securities is registered in the Central Securities Depository, registration is mandatory, for the registration requirements and registration procedure see the right to own registered securities,
- with respect to trademarks, industrial designs and patents, is registered by the Industrial Property Office, registration is mandatory, for the registration requirements and registration procedure see the right to own applied designs, industrial designs, etc.,
- with respect to immovable property not registered in the land registry, collective property, works and other movable property (where the security agreement is written in the form of a notarial deed) is registered in the security register, Registration is mandatory, for the registration requirements and registration procedure see: <https://www.nkcr.cz/sluzby/overovani-a-vypisy-z-rejstrikuvyhledavani-v-rejstricich-a-kontaktmi-misto-czech-point>.

Lien: not registered in any records.

Transfer of title as security of obligation:

- with respect to immovable property is registered in the real estate cadastre, registration is mandatory, for the registration requirements and registration procedure see the right to own immovable property,
- with respect to a share in a limited liability company is registered in the commercial register, registration is mandatory, for the registration requirements and registration procedure see the right to own a share in a limited liability company,
- with respect to trademarks, industrial designs and patents, is registered by the Industrial Property Office, registration is mandatory, for the registration requirements and registration procedure see the right to own applied designs, industrial designs, etc.,

Right of pre-emption:

- a contractually established right of pre-emption with respect to immovable property is registered in the land registry, registration is mandatory, for the registration requirements and registration procedure see the right to own immovable property,
- a contractually established right of pre-emption with respect to a share in a limited liability company is registered in the commercial register, registration is mandatory, for the registration requirements and registration procedure see the right to own a share in a limited liability company,

a contractually established right of pre-emption with respect to trademarks, industrial designs and patents, is registered by the Industrial Property Office, registration is mandatory, for the registration requirements and registration procedure see the right to own applied designs, industrial designs, etc.,

### **3 Which effects are linked to the registration of the rights in rem?**

As regards the registration of rights in rem as a result of the death of the original owner (i.e. the transfer of rights in rem), their registration always has declaratory effects. Succession is acquired, namely, through the death of the testator, whereby such acquisition must be confirmed by a court. The court's resolution on succession declares the legal relationships effective on the date of the testator's death. This principle is not expressly laid down by law in relation to the individual public registers.

### **4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?**

There are no specific rules for the adaptation of foreign rights in rem unknown in the Czech legal system.

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