



# Legal Update

January 2020

## Weinhold Legal

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The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

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### Legislative Amendments

#### Amendment of the Energy Management Act

An Energy Management Act amendment was promulgated in the Collection of Laws as Act No. 3/2020 Coll. amending Act No. 406/2000 Coll. on energy management, as amended. As a result of its proposed effectiveness on the fifteenth day after its promulgation, the Act will come into effect on 25 January 2020.

The main purpose is to comply with European law on improving energy efficiency.

The most important changes concern the performance of energy audits and authorization of energy specialists.

Energy audits will not be concerned with energy consumption alone; on the contrary, they will focus on energy management as a whole, taking into account all areas of energy management of a given entity. Consequently, energy efficiency improvements will also be investigated for those components that have low energy consumption, where consumption can be further reduced.

In addition, the amendment will affect the authorization of energy specialists. It will now be possible to grant such authorization not only to natural persons, but also to legal entities, which should reduce instances of non-punishability and the impossibility of imposing sanctions in the event of poorly performed work.

#### Adoption of a Real Estate Brokerage Act

A bill amending the Real Estate Brokerage Act was adopted and awaits promulgation in the Collection of Laws, following which the fifteen-day period starting on the day following the day of its promulgation (at which time the law becomes effective) shall commence.

The aim of this Act is to concentrate the regulation of real estate brokerage in one comprehensive special regulation, in particular to protect the client and to improve the conditions under which real estate services are provided.

The most important changes can be summarized as follows:

1. The introduction of the obligation to insure real estate agents liability and the obligation to submit an insurance contract to the Ministry for Regional Development; in the case of non-fulfilment, real estate agents will face a fine of up to CZK1,000,000 if the insurance contract is not concluded and CZK100,000 if it is not submitted to the Ministry;
2. The definition of the concept of real estate brokerage and thus the specification of everything that falls under the given term (i.e. the search for real estate transactions; including securing advertising, assessing the condition and proposing the offer price of property, conducting inspections, providing construction and technical documentation, as well as providing legal and escrow services, oneself or via a qualified third party);
3. Furthermore, the obligation to conclude a written real estate brokerage agreement and the provision of real estate brokerage solely on the basis thereof as well as the possibility to agree on exclusive real estate brokerage, rendering it impossible for the interested party to conclude more such contracts for a particular subject or to conclude a real estate contract independently of the real estate agent (generally, the breach of such an agreement will result in an obligation to pay damages or a contractual fine);
4. As a rule, the maturity of the commission should be tied to a date not preceding execution of the real estate contract, with earlier maturity only being possible if additional conditions are met;
5. The real estate broker will be obliged by law to provide information on the extent of defects and limitations discernible from public lists or of which they knew or should have known. If this obligation is not met, the interested party will have the expressly specified option of withdrawing from the real estate brokerage contract.



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## Recent Case Law

### **Position of a statutory body member – exercise of due diligence and selection of a qualified third party**

*(Supreme Court Judgment No. 27 Cdo 90/2019 of 30 September 2019)*

The case law here addresses the issue of breach of due diligence in the following circumstances – when selecting a candidate in a tender for a provider of information technology services, a company director did not have sufficient knowledge to assess the most suitable candidate. She therefore engaged a friend. Subsequently, the company sought compensation from the director for damages caused by the execution of the contract.

The Supreme Court recapitulates several fundamental rules applicable in assessing whether or not a director has acted with due diligence.

It is true that the director is responsible for due performance of her office, not for the results of her actions. Therefore, the consequences of such an act are also not important.

On the other hand, it is necessary to assess whether the director has acted knowledgeably (i.e. has ascertained all available information related to the decision before making it) and loyally (whether she has favoured her own interests or those of others at the expense of the company).

Moreover, all the circumstances of the given case must always be taken into account.

In this specific case, the director correctly identified the need to obtain expert advice when she lacked the necessary expertise herself. However, she was also responsible for selecting a person equipped with this expertise (“responsibility for selection”), for the selected person to have proper instructions, to be provided with the necessary assistance and to be properly guided (“responsibility for assignment, guidance and assistance”) and, moreover, for due oversight of this person (“oversight responsibility”). In the given case, not all of these criteria were assessed, making it necessary to supplement the management method in this way.

The Court must assess the above criteria in individual cases, and only on the basis of their assessment conclude whether there has been a breach of or failure to observe due diligence.

### **Possibility of proving other grounds for inheritance**

*(Supreme Court Judgment No. 24 Cdo 1777/2019 of 27 September 2019)*

This dispute over the law of succession dealt with the case of a grandfather (testator) who disinherited his grandsons in a deed of disinheritance made in the form of a notarial deed on 31 August 2012 because of a lack of genuine interest in his person.

However, one grandson challenged the disinheritance in an action brought after the deceased's death (24 January 2015), claiming that the provided grounds for the disinheritance were not fulfilled because the deceased himself had had no interest in contact with his grandson.

However, the counterparty (comprising the other parties to succession proceedings in disputes over the law of succession) argued that, in addition to the grounds given in the deed of inheritance in question, it is also necessary to investigate fulfilment of the other grounds for disinheritance, in particular the failure to provide necessary emergency assistance.

The Supreme Court supported the conclusion that the grounds for disinheritance comprising non-expression of a genuine interest were not fulfilled. For these grounds to exist, in the first place an active interest of the testator in contact with the offspring, which is then ignored by the

offspring, must be demonstrated.

On the other hand, the Supreme Court disagreed that it is impossible to assess other grounds for disinheritance.

Pursuant to the existing legislation, in the case of death of testators after 1 January 2014, fulfilment of the grounds for disinheritance is assessed up to the date of the testator's death. In addition, the validity of the deed of inheritance is no longer subject to the express mention of one of the legal grounds for disinheritance.

The Supreme Court therefore concluded it was also necessary to examine the other grounds for disinheritance, even though they were not originally listed by the testator in the deed of disinheritance, and if the court concludes they exist on the day of the deceased's death, it is necessary to conclude that such disinheritance is valid.

### **Profile photo of a Facebook user and its relationship to a news license**

*(Supreme Court Judgment No. 25 Cdo 1778/2019 of 15 October 2019)*

This case concerned the publication of a profile picture of the applicant during her pregnancy on a website in connection with the case of her friend's death and subsequent investigation. The applicant challenged the legitimacy of the publication of her photo and the appropriateness of its use.

The Court of Final Appeal sided with the applicant, since although disclosure under a news license applies to existing arrangements and to online news, the requirement of proportionality cannot be ignored in this context.

By simply making a photo available as a profile photo on Facebook, the user does not give implied consent to its publication. This is all the more so since there is no possibility to limit the accessibility of such a photo to a narrow group of users.

It is therefore possible to use such a photograph, but here too it is necessary to carry out a proportionality test, to consider the purpose of the photo's publication, the form and content of that publication, whether or not the person to whom the photograph relates is a person of public interest and so on. Only if these conditions are met can the publication be considered reasonable and therefore covered by a news license.

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We hope that you will find *Legal Update* a useful source of information and we would value your feedback on this newsletter, in particular its content, format and frequency.

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