

# Remedy in case of eviction

Nowadays, the purchase and sale, particularly of properties, is an activity that is frequently carried out in our country. A mechanism commonly included in the contracts of sale of properties is the remedy in case of eviction.

Our Civil Code regulates the remedy in case of eviction from articles 1245 to 1253. The eviction is the loss or disturbance suffered by the acquirer of a property, or a real right over a property, due to vices before the acquisition. This is the case of, for example, a person who buys a property, and then it turns out that he is sued by a third party who claims to be the previous legitimate owner of the property.

The regulations indicate that eviction will take place when the buyer is deprived, by a final judgment and by a right before the purchase, of all or part of the thing purchased.

As we can see, it is an essential requirement to demand the remedy in case of eviction that there is a final judgment, that is, that no recourse is allowed, by which the buyer is condemned to the loss of the acquired thing or part of it.

If eviction occurs, the buyer shall be entitled to demand from the seller using the remedy action:

1. The restitution of the price of the thing sold at the time of the eviction, whether it is higher or lower than that of the sale;
2. The fruits or yields, if the buyer has been ordered to deliver them, to the one who has defeated him in the trial by eviction;
3. The costs of the lawsuit that has motivated the eviction and, where appropriate, those of the case followed with the seller to achieve the remedy;
4. The costs of the contract of sale, if paid by the buyer; and

5. Damages, interest, voluntary expenses, pure embellishment, or ornament expenses if the sale was in bad faith.

Although the liability for the remedy in case of eviction by the seller should be expressly established in the sales contract, the applicable rules indicate that the seller will be liable for the eviction even if nothing has been expressed in the contract. In addition, they establish that any agreement that exempts the seller from being responsible for the eviction is null and void if there is bad faith on his part.

The remedy for eviction prescribes four (4) years from the date of the eviction judgment. If the thing has been returned to the holder of the previous right without the judgment being pronounced, then the time will be counted from the return date.

This legal mechanism may become especially relevant so that anyone, having acquired a property in good faith and is subsequently harmed by the existence of a previous right in favor of another, can achieve compensation for the damages caused.

