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## TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

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**National Report for**

**LITHUANIA**

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**National Report for Lithuania**  
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## **1. Housing situation**

### **1.1. General Features**

**Please add here some general introduction**

### **1.2. Historical evolution of the national housing situation and housing policy**

- Please describe the historic evolution of the national housing situation and housing policies briefly

- In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatisation or other policies).

First of all it should be mentioned that at the period of the Soviet Union all dwellings were the property of the state. The individuals could have only one house as their private ownership, which could be not bigger than 130 sq/m area. After the restoration of independence, the Law on the privatization of apartments<sup>1</sup> was adopted under which tenants were able to privatize state-owned apartments?

When Lithuania had restored its independence in 1990, the essential economic sector reforms were implemented. Within 12 years Lithuania coped with a complex transitional period and became a state with an open market economy, a state which has become an EU member.

The economic development of Lithuania encouraged housing policy changes, which resulted in the restructuring of the housing sector, abolishment of the direct regulation of the housing market; the population acquired their housing ownership. In 2001 the private housing sector accounted for 97% of the total housing stock (it should be noted that there is no official data about the structure of the housing stock (individual owners, cooperatives, etc.) being in private hands). A very small public rental housing sector provided limited opportunities for responding to social housing needs.

After economic crisis at the end of 2007 the real property market started showing signs of stagnation: the housing price growth subsided and the number of real property transactions decreased. Due to increased uncertainty and banks tightening credit availability, lending for house purchase and to the housing market-related enterprises declined significantly since the end of 2007. In 2011 housing market regained stability. Even though residential property prices in the major cities of Lithuania remained fairly stable, further growth in the number of transactions was recorded. At the end of June 2009 it has been estimated that in five largest cities there were about 3500 unsold newly built flats, from which 2100 are from projects developed in 2008. Under current market conditions, it is particularly difficult to find tenants or buyers; even substantial cuts of rental or sales prices do not always help. Under these circumstances the supply of new

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<sup>1</sup>The Law on the privatization of apartments of the Republic of Lithuania (amended and supplemented). Government Journal, 1991, No. 17-449.

flats in largest Lithuanian cities in 2009 and 2010 (compared to 2008) went down by 2,5-3 times<sup>2</sup>.

In Lithuania the official housing rental market almost does not exist. Lithuania feels a shortage of rental housing, especially for low-income families (young and elderly families). The prices of private rental housing vary depending on location and housing standards, and the prices of municipal social housing are lower by tenfold. Social housing accounts for only a few percent of the total housing stock. The development of social housing has been slowing down as a result of reduced public and municipal investments.

One of the major problems is that low-income families, which cannot afford to maintain their housing, have poor opportunities for selecting housing. Young low-income families cannot afford to purchase or rent housing on the market. This leads to restricted mobility and does not encourage market dynamics.

- In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)

### **Briefly about the emigration before and during Soviet occupation**

Lithuanian emigration occurred in the 19th and first part of the 20th century largely for reasons of political oppression and unrest, economic underdevelopment and stagnation, and religious oppression under the Czarist Russian regime. First period of emigration began in 1918 and saw the loss of some 635,000 people or 20 percent of the Lithuanian population, with approximately one-third destined for the United States where prospects seemed brighter. During World War II, displaced Lithuanians fleeing Soviet occupation and persecution again left *en masse*, the majority going to Germany. Additionally, around 30,000 mostly political refugees sought haven in the United States<sup>3</sup>. From 1989 to 1996, migration from the Baltic States to the Russian Federation totalled 215,000 persons as Russian return-migration ensued following the collapse of the Soviet Union<sup>4</sup>.

### **Briefly about emigration in the mid-1990s**

It is difficult to present precise figures on the number of emigrants since 1990, because the available data vary by source and method of calculation. However, through census data that is adjusted to account for illegal emigration, Statistics Lithuania provides the most accurate account of total emigration from 1990. In contrast to the estimates that

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<sup>2</sup> Available at the internet portal marketnews.lt (marketnews.lt is cooperating with Lithuanian Department of Statistics and refers to its official data) (in Lithuanian): <<http://ntnaujienos.lt/tag/marketnews-lt/>> (last visited 25 March. 2014).

<sup>3</sup> Kuzmickaite, D. *Between Two Worlds: Recent Lithuanian Immigrants in Chicago 1988–2000*, Versus Aureus, (Vilnius, 2003).

<sup>4</sup> Romaniszyn, K. "Current migration in central and eastern Europe: peculiar or integrating into European migration system?" Institute for Social Studies, University of Warsaw, (Warsaw, 1997).

show a small or even positive net migration in the latter part of the 1990s, the adjusted data reveal a negative net migration of more than 20,000 emigrants per year over the decade.

While examining Lithuanian emigration, it is also important to note the primary destination of emigrants since 1990 and leading up to EU accession. The flow of Lithuanian emigrants following the collapse of the Soviet Union was mostly directed towards Poland, the United States, Germany, and Israel. Poland, Germany, Scandinavia, and the United States were the main destination countries for permanent emigrants. Other important destinations of labour emigrants in the years following independence included the United Kingdom, Denmark, Sweden, France, the Czech Republic, and the Republic of Ireland<sup>5</sup>.

### **Briefly about emigration/immigration from 2007 to 2011**

In 2011, the number of emigrants exceeded that of immigrants by 38,2 thousand (53,9 thousand persons emigrated, 15,7 thousand – immigrated). Over the last five years (2007–2011), 222 thousand persons emigrated and 45,3 thousand immigrated. In the context of other EU member states, Lithuania is distinguished by the largest negative net migration per 1000 population.

In 2011, 53.9 thousand residents emigrated from Lithuania; there were 16.7 emigrants per 1000 population. Against 2010, the number of emigrants decreased by 29.3 thousand, or 1.5 times. In 2011, every second emigrant left for the United Kingdom, one-tenth (10.4 percent) – Ireland, 7.1 percent – Norway, 7 percent – Germany. In 2011, 82 percent of emigrants aged 15 and older had been unemployed for a year or longer prior to their emigration (in 2010, 85 percent).

In 2011, 15,7 thousand persons immigrated to Lithuania; there were 4,9 immigrants per 1000 population. Against 2010, the number of immigrants increased by 10,5 thousand, or 3 times. Most immigrants (76,1 percent) arrive from the EU member states. In 2011, 14 thousand citizens of Lithuania (89,3 percent of the total number of immigrants) returned to Lithuania, i.e. by 9,9 thousand, or 3,4 times, more than in 2010. In 2011, 1,7 thousand foreigners immigrated to Lithuania, i.e. by 613 more than in 2010. It should be noted that about 80 percent of immigrants are Lithuanian citizens. For example there are only about 1,1 percent foreigners of total population in Lithuania.

According to the data mentioned above, it is obvious that such striking emigration plays negative role in private and rental housing market. The need to rent or buy a dwelling reduced due to general population decline (according to the Statistics Lithuania more than 650 thousand people emigrated from Lithuania counting from 1990<sup>6</sup>).

### **Government attempts to prevent or limit the migration**

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<sup>5</sup> Okolski, M. "New migration trends in Central and Eastern Europe in the 1990s", Series: Labour Migration, 4, Institute for Social Studies, University of Warsaw, (Warsaw, 1997).

<sup>6</sup> Homepage of the Lithuanian Department of Statistics (in Lithuanian): <[http://osp.stat.gov.lt/documents/10180/637156/Pasaulio\\_lietuviu\\_bendr\\_Gyv\\_tarpt\\_migr\\_130509.pdf/48e90937-3bd1-4590-8aa6-68087cdf46dd](http://osp.stat.gov.lt/documents/10180/637156/Pasaulio_lietuviu_bendr_Gyv_tarpt_migr_130509.pdf/48e90937-3bd1-4590-8aa6-68087cdf46dd)> (last visited 25 Mar. 2014).

Since Lithuania recovered its independence in 1990s, it had increasingly become an emigration country for economic migrants and a destination country for irregular migrants from the east, mainly from the neighboring countries. Currently, labour migration to and from Lithuania, return migration of Lithuanian citizens and integration of nationals of the third countries take priority among other migration management issues. According to the national legislation there are no governmental attempts to limit or prevent migration process in Lithuania.

The measures for regulating migration (for example, return information and counseling; logistical arrangements; reinstallation allowances; special voluntary return assistance to vulnerable persons, etc.) and measures for facilitating migration (migrant integration) were established in the Resolution No. 228 of the Government of the Republic of Lithuania on the approval of 2012-2016 governmental program for the implementation of priority measures. These measures have been implemented by the Ministry of the Interior of the Republic of Lithuania, the Ministry of Social Security and Labour of the Republic of Lithuania, the Department of Migration under the Ministry of the Interior of the Republic of Lithuania, and other governmental institutions.

It should be mentioned that in Lithuania the strategic goal of the regulation of migration is to ensure the migration processes, related to legal status of aliens, granting of asylum, issuance of personal identity documents, the level of governance, comply with the requirements of the European Union, and pass decisions regarding questions of the citizenship of the Republic of Lithuania<sup>7</sup>.

### 1.3. Current situation

- Give an overview of the current situation.
  - In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?

It should be noted that according to the data provided by the Statistics department of Lithuania the national stock of dwellings consisted of 1280,2 thousand dwellings, i.e. there were 400 dwellings per 1000 population.

It must be noted, however, that in the case of Lithuania it is doubtful what the share of the rental housing sector is because to date no database is available that consistently registers types of tenure choices in transition countries, and the correct share of tenants is most likely to be underestimated. Additionally, due to tax avoidance a large number of small landlords (individual people) avoid stating that they rent dwellings. Mostly informal, private rental market exists in Lithuania. Without exact data for the number of people living in rented dwellings, we have to rely on information from reports based on surveys

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<sup>7</sup> Homepage of the Migration Department of Lithuania (in Lithuanian): <<http://www.migracija.lt/index.php?-1497548128>> (last visited 4 Feb. 2014)

and/or evidence from other sources. According to a survey released by Swedbank<sup>8</sup>, one of the country's largest banks, the share of people living in rented dwellings in Lithuania is about twelve percent and eighty-eight percent own a house or a flat where they live.

Please note that the year of this information is 2011.

- The principle *superficies solo cedit*

According to the Article 4.40 of the CC<sup>9</sup> of the Republic of Lithuania the owner of a land parcel shall have as his ownership the upper layer of the soil of the parcel, the buildings and the appurtenances constructed on the parcel, as well as other immovable things, if the law does not provide otherwise. So there is a presumption of the principle *superficies solo cedit*, but in practice there are a lot of exemptions, for example, the majority of the land of the blocks is the property of the state.

#### 1.4. Types of housing tenures

- Describe the various types of housing tenures.
  - Home ownership
    - How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)

According to a survey released by Swedbank, one of the country's largest banks, 69 percent of Lithuanians have purchased their dwelling using their own funds. 18 percent of Lithuanians have inherited the dwelling or live in the dwelling which belongs to their relatives (family members). Remaining 13 percent of Lithuanians purchased their dwellings using mortgage<sup>10</sup> based loans/personal loans.

It should be noted that according to the Statistics Lithuania in the year 2011 there were 80 households which received state supported housing credits<sup>11</sup>. The amount of the subsidies allocated was 806,3 thousand Lithuanian litas (LTL).

Please find the table attached below.

#### **Persons (families) who received state-supported housing credits**

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<sup>8</sup> Homepage of the one of the country's largest banks (in Lithuanian): <<http://www.swedbank.lt/lt/articles/view/1647>> (last visited 02 Feb. 2014).

<sup>9</sup> The Civil Code of the Republic of Lithuania (amended and supplemented), Official Journal, 2000, No.74-2262.

<sup>10</sup> Homepage of the news of the LRT (national television and radio of Lithuania) (in Lithuanian): <[http://www.lrt.lt/naujienos/ekonomika/4/26975/lietuvoje\\_populiareja\\_per\\_du\\_menesius\\_pasta\\_tomi\\_namai](http://www.lrt.lt/naujienos/ekonomika/4/26975/lietuvoje_populiareja_per_du_menesius_pasta_tomi_namai)> (last visited 25 Mar. 2014).

<sup>11</sup> Available at the internet portal marketnews.lt (marketnews.lt is cooperating with Lithuanian Department of Statistics and refers to its official data) (in Lithuanian): <<http://ntnaujienos.lt/paskolos-bustui-kokie-namai-iperkami-pokrizineje-lietuvoje-visa-straipsni-galite-rasti/>> (last visited 25 Mar. 2014).



Year	Number of persons (number of families)	Amount of credit, LTL thous.	Subsidies allocated: 20 %		Subsidies allocated: 10 %		Housing credit insurance	
			number of persons (number of families)	amount of subsidies, LTL thous.	number of persons (number of families)	amount of subsidies, LTL thous.	number of persons (number of families)	insurance premium, LTL thous.
2011	80	7354,6	23	491,8	39	314,5	5	14,5

- Restituted and privatised ownership in Eastern Europe

### Privatised ownership in Lithuania

During the early 1990s, the government launched a comprehensive program of market-oriented reforms, which included the privatization of state-owned enterprises, housing, and the lifting of price controls, land reform, and reform of the banking sector.

In 1991 the special Law on the on the privatization of apartments and the the Resolution No. 309 of the Government of Lithuania on the procedures of the apartment's privatization, sale and use were adopted under which people were able to privatize state-owned apartments<sup>12</sup>. This law established the rules of the purchase and of the sale of the dwellings from the State fund and the public fund for the tenants who expressed a desire to acquire ownership of dwellings until 31 December 1991.

Privatization occurred at a rapid rate in the 1992-94 period (especially with respect to farmland, housing, and small enterprises), and about half of the large and medium-size enterprises scheduled for privatization were sold through public share offerings. The Law on Initial Privatization of State Property<sup>13</sup>, passed in early 1991 as amended several times in 1993 (primarily with regard to land reform and restitution), served as the principal basis for privatization. To start the process, the law authorized the issuance of investment vouchers to residents of Lithuania, to be used for the purchase of housing or other property. Most housing property eligible for privatization had been privatized by the end of 1993.

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<sup>12</sup>The Resolution No. 309 of the Government of the Republic of Lithuania on the procedures of the apartment's privatization, sale and use (31 July 1991). Official Journal, 1991, No. 28-765

<sup>13</sup>The Law on Initial Privatization of State Property of the Republic of Lithuania (amended and supplemented). Government Journal, 1991, No. 10-261.

## Restituted ownership in Lithuania

In 1991 the Law on the procedure and the rules of the restoration of the citizens' property rights to real property<sup>14</sup> was adopted while in 1997 the Law on the restoration of the citizens' property rights to real property was adopted<sup>15</sup>. These special laws regulated the restoration of the property rights of the Lithuanian citizen whose property was nationalized according to the USSR laws or which was otherwise unlawfully expropriated.

Statistical information on the restitution of property rights to residential houses (portions thereof) has been prepared based on statistical data on the process of the restitution of property rights to residential houses (portions thereof) which were nationalised during the Soviet occupation or otherwise unlawfully made public, as well as on the restitution of residential houses (portions thereof), dwellings to the former owners and the eviction of tenants residing in those residential houses, provided by municipalities. Statistical information is provided from the start of the restitution of property rights to residential houses (portions thereof) and in reference years. Since 1991, 9,6 thousand citizens' applications for the restitution of property rights to residential houses (portions thereof) were received. Until 2011, property rights were restored to about 6,8 thousand owners or inheritors, of whom 4,6 thousand will have their rights to residential houses (portions thereof) restored by returning them in kind, while 2,2 thousand will receive a compensation, reward, an equivalent dwelling, etc. In 2010, property rights to residential houses (portions thereof) were restored to 32 owners, of whom to 22 – by returning the houses in kind, while 10 owners were compensated in another way.

At the end of 2010, there were 1,7 thousand residential houses for which their previous owners or inheritors claimed rights. At the end of 2010, 0,2 thousand tenant families lived in residential houses subject to restitution. In 1991–2010, the number of tenant families evicted amounted to 7,1 thousand (in 2010, 15). As much as 46 percent of the tenants evicted were accommodated in the dwellings provided by municipalities, while 54 percent resolved their dwelling problem in another way (land plots to build individual residential houses were granted etc.). About 436,2 million Lithuanian litas of budget allocations (in 2010, 2,1 million Lithuanian litas) was used for moving tenant families from residential houses subject to restitution.

<b>Restitution of property rights to residential houses</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Lithuania</b>			

<sup>14</sup> The Law on the procedure and the rules of the restoration of the citizens' property rights to real property of the Republic of Lithuania (amended and supplemented). Government Journal, 1991, No. 21-545.

<sup>15</sup> The Law on the restoration of the citizens' property rights to real property of the Republic of Lithuania (amended and supplemented). Official Journal, 1997, No. 65-1558.

From the date the Law on the Order and Conditions of Restitution of Property Rights to Real Estate of Lithuania came into force (18 June 1991)			
Tenant families evicted from residential houses restored to their owners	6 902	7 126	7 141
Owners who reinstated their property in kind	4 515	4 545	4 567
Use of budget allocations for eviction of tenant families, LTL thousand	427 556,4	434 158,3	436 242,8
Bought, constructed or repaired dwellings	3 265	3 271	3 273
Useful floor space of bought, constructed or repaired dwellings, m <sup>2</sup>	166 285	166 567	166 673
Number of applications for restitution of property rights to residential houses	9 620	9 625	9 631
Owners with the restored property rights to residential houses (their parts)	6 694	6 785	6 817
Over corresponding year			
Tenant families evicted from residential houses restored to their owners	342	224	15
Owners who reinstated their property in kind	50	30	22
Use of budget allocations for eviction of tenant families, LTL thousand	106 531,9	6 841,9	2 084,9
Bought, constructed or repaired dwellings	288	6	2
Useful floor space of bought, constructed or repaired dwellings, m <sup>2</sup>	15 970	282	106

Number of applications for restitution of property rights to residential houses	7	5	6
Owners with the restored property rights to residential houses (their parts)	154	91	32

○ Intermediate tenures:

- Are there intermediate forms of tenure classified between ownership and renting? e.g.
  - Condominiums (if existing: different regulatory types of condominiums)

In Lithuania the equivalent of the condominium is called “the Partnership of the owners of blocks of flats”. There is a special law – the Law on the Partnership of the owners of blocks of flats and on Partnership of other purposes buildings owners<sup>16</sup>. This law provides<sup>17</sup> for multi-family residential houses and other buildings holders of common shared property management, the way the establishment of partnership is governed by the establishment, management, operation, reorganization and liquidation of the partnership of apartments and other premises (building) owners – the members' rights and responsibilities.

The Partnership of the owners of blocks of flats is a private, non-profit legal entity. Partnership is established in order to create more opportunities to take the total building engineering equipment repair and reconstruction work, the plot assigned to the building management and other work to improve the common areas. It allowed the partnership to legitimize the use of common facilities and lease them. Only 17 percent of apartment buildings are owned and maintained by the homeowners who establish home owner's partnerships<sup>18</sup>.

The establishment of partnership often lack initiative of local government institutions, information and organizational-technical state aid. Partnerships usually are unable to provide adequate common property maintenance. They often contract to hire other players to do so, but there is a lack of companies providing good quality services. In 2000, local governments began to accumulate special home owner's funds. These funds

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<sup>16</sup> The Law on the Partnership of the owners of blocks of flats and on Partnership of other purposes buildings owners of the Republic of Lithuania (amended and supplemented). Official Journal, 1995, No. 20-449.

<sup>17</sup> The Resolution No. 60 by the Government of the Republic of Lithuania on the approval of the Lithuania's dwelling strategy (21 January 2004). Official Journal, 2004, No. 13-387.

<sup>18</sup> Establishemnt of the companies in Lithuania (in Lithuanian): <http://www.garuda.lt/register.html#gyvenamojo%20namo%20stat%20bendr> (last visited 18 Oct. 2012).

are used to promote the establishment of homeowner's partnerships, to rehabilitate houses, and implement energy-saving measures.

There were 35 registered partnerships of the owners of blocks of flats in Lithuania at the beginning of 2012<sup>19</sup>.

- Company law schemes: tenants buying shares of housing companies

As already mentioned, in Lithuania multi-family residential houses and other buildings holders can hire companies that provide home management and maintenance services. But it is also possible in some situations that multi-family residential houses and other buildings holders set up a company that not only manages their home, but also provides such services to others as a commercial activity. In this case, the house owners own shares in a company which provides housing management/maintenance services to other home owners.

- Cooperatives

The cooperatives in Lithuania now are called "Partnership for construction of residential buildings". Its activity is regulated by the Resolution No. 280 of the Government of Lithuania, 23 April 1993<sup>20</sup>. This partnership has been set up to supply their member's with residential houses or apartments. The partnership can be registered only when the funding issues for construction is solved. Partnership may be founded by municipalities, companies, institutions, organizations and individuals.

There were 408 registered Partnerships for construction of residential buildings at the beginning of 2012.

According to the CC the sublease of the dwelling may be another intermediate form of tenures between ownership and renting: if the lessee of the dwelling acts in the capacity of a lessor of dwelling if he forms a contract of sub-lease under the procedure established by laws (Article 6.578).

- Rental tenures

- Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?

In Lithuania, rental tenures with and without a public task are distinguished. Rental tenures with a public task are called social housing (non commercial, municipality owned

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<sup>19</sup>

Number of economic entities in operation at the beginning of the year by size class of enterprises, legal form and year. Statistics Lithuania. Available at:

<http://db1.stat.gov.lt/statbank/selectvarval/saveselections.asp?MainTable=M4010118&PLanguage=1&TableStyle=&Buttons=&PXSLd=5398&IQY=&TC=&ST=ST&rvar0=&rvar1=&rvar2=&rvar3=&rvar4=&rvar5=&rvar6=&rvar7=&rvar8=&rvar9=&rvar10=&rvar11=&rvar12=&rvar13=&rvar14=>> (last visited 18 Oct. 2012).

<sup>20</sup>The Resolution No. 280 of the Government of the Republic of Lithuania on the approval of residential home construction community and residential building maintenance community model articles of association (23 April 1993). Government Journal, 1993, No. 14-369.

living premises that are rented based on the governmental order determining the rent fee). They are intended for low-income people and families. In Lithuania, there is no other form of support (like rental housing in private housing market for people with low income). It should be noted that Municipal apartments rented at a rent fixed by the state represent social housing in the country. After the privatisation of the housing stock, only 3% remained as public social housing, which is now let for rent to particularly disadvantaged groups.

The concept of the share apartments is special form of the dwelling rent. The CC distinguishes between two types of tenure with special purposes (officially however these tenure's types are not considering as having the public task): office dwelling premises (Article 6.618 – 6.622) and hostel premises (Article 6.623 and 6.625). The office dwellings premises are granted by the employer for the purpose of housing workers (employees), taking in regard the character of their work (public service) or conditions established by laws, for the period of their work (public service), termination of the labour relationship with the employer, or disappearance of the conditions established by law. The hostel premises are granted to the workers, employees, students and high school pupils during their time of work or study. There are no official data on the percentage of these housing premises.

- How is the financing for the building of rental housing typically arranged?

The construction and management of publicly owned housing is entirely financed by public funds. In the past 90% of the cost was financed by the state budget and 10% by the municipality, but now the ratio has changed and the municipal share is becoming bigger. Rents in municipal social housing vary depending on location but on average they are lower than market rents are lower by tenfold.

- What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?
- Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square meters or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)

The market share of each type of tenure is: private property accounted for almost 97 percent of the total stock of dwellings, public and municipal property – for more than 3 percent.

According to the data of the State Enterprise Centre of Registers, as of 31 December 2010, the stock of dwellings amounted to 84.8 million m<sup>2</sup> of useful floor area (53.8 million m<sup>2</sup> in urban areas and 31.0 million m<sup>2</sup> in rural areas).

Living quarters in individual houses made up 48 percent of the total stock of dwellings. It should be noted that most of people live in dwellings, which were constructed in 1961-1990.

The average useful floor area per capita amounted to 26.1 m<sup>2</sup>, in urban areas – 24.8 m<sup>2</sup>, in rural areas – 28.9 m<sup>2</sup>. The useful floor area per capita in Vilnius city amounted to 25.5 m<sup>2</sup>, Kaunas city – 25.4 m<sup>2</sup>, Klaipėda city – 23.4 m<sup>2</sup>, Šiauliai city – 22.9 m<sup>2</sup>, Panevėžys city – 22.4 m<sup>2</sup>. The stock of dwellings was comprised of 1274.4 thousand dwellings. In urban areas, two-room dwellings were predominant (39 percent), in rural areas – three-room dwellings (32.4 percent). There were 393 dwellings per 1000 population. The average size of a dwelling was 66.6 m<sup>2</sup>, in urban areas – 60.9 m<sup>2</sup>, in rural areas – 79.3 m<sup>2</sup>. Analyzing the quality of stock it should be noted that there were 71,1 percent of dwelling stock with a bath or a shower, 61,6 percent of dwelling stock with hot running water and 73,5 percent of dwelling stock with central heating (2008 year data).

According to the information of the real estate portal Aruodas.lt in the recent years the construction of individual houses is more popular and attractive than the construction of flats<sup>21</sup>.

### 1.5. Other general aspects

- Are there lobby groups or umbrella groups active in any of the tenure types? If so, how are they called, how many members, etc.?

Here it could be only mentioned Lithuanian Chamber of Housing Management and Maintenance. It is a non-profit association (it is not a lobby group) registered in Juridical persons' Registry. Organisation was founded in 2004 November 12th and actively works in the territory of Lithuania. Members of the organisation are housing management associations and their umbrella organisations, companies managing community housing services, public properties, owner's right associations etc.

The main activities performed by Lithuanian Chamber of Housing Management and Maintenance are: coordination of the activities of the Members, representation of their interests on international and national levels, protection of consumer rights and legal interests, education of consumers, promotion of owners economical and social interests as the top priority.

The aim of the organisation is to implement functions of independent control institution responsible for observation of housing management services, services capacity and quality as well as carry responsibility on composition, review and monitor of Ethics Code for providers.

Lithuanian Chamber of Housing Management and Maintenance organises trainings, education, refresher courses for owners of houses, providers, management services providers and other responsible for housing management persons.

Lawyers of the organisation provide to consumers and house owners verbal, written and telephone consultations of their rights, provides information on valid national and EU legal acts in this field, mediates in solving disputes. Organisation provides legal conclusions for governmental institutions. If serious violations occur Lithuanian Chamber

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<sup>21</sup> The construction of the individual houses is growing in the small cities. Read more (in Lithuanian): <<http://en.aruodas.lt/straipsniai/mazesniuose-miestuose-auga-individualiu-namu-242/>> (last visited 22 Feb. 2014).

of Housing Management and Maintenance examines unfair actions and takes decisions in the Commission of Ethics Control.

Organisation is actively involved in the state housing policy development and the implementation of objectives of the state housing strategy. It helps the authorities to implement the resolutions of the Government on housing management, maintenance, operational capacity.

Lithuanian Chamber of Housing Management and Maintenance makes offers, conclusions, remarks, opinions, preparing and enacting legal acts, participates in processing projects of legal acts in state institutions, provides notes on valid legal acts as well.

Association assists the Government as to implementation of energy-saving and home renovation programme. Association makes recommendations for the home owners associations and managers as rational as better, less costly but more effective to achieve the expected energy savings result. Lithuanian Chamber of Housing Management and Maintenance actively cooperates with the Office of the Government, Environment Committee of Lithuanian Parliament, Ministry of Environment, Ministry of Energy, Ministry of Economy, Ministry of Justice, the State Consumer Rights Protection Authority, other governmental institutions, city and regional municipalities, non-governmental organizations. The main funding of association comes from membership fees, national funds and paid activities.

Structurally Lithuanian Chamber of Housing Management and Maintenance is composed of an independent city and regional organisations. The Board of Lithuanian Chamber of Housing Management is coordinating the main activities of the association and Maintenance composed of 8 persons. President leads daily activities, represents association in governmental, municipality and other institutions. The supreme body of the organisation is the Congress of Lithuanian Chamber of Housing Management and Maintenance. The Audit Commission controls financial operations.

- What is the number (and percentage) of vacant dwellings?

There is no available data about the number (percentage) of vacant dwellings in Lithuania.

- Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?

It should be noted that in Lithuania there are only a few percent of people who are renting housing officially. However the black market is playing an important role in the housing market. Complicated personal tax on real estate procedures is one of the reasons why Lithuania has a large informal rental housing market. Landlords do not register the rental agreements in the registers in order to avoid paying taxes.



Summary table 1 Tenure structure in Lithuania, the date of the data - 2011<sup>22</sup>

Home ownership	Renting			Interme- diate tenure	Other	Total
88%	12%	Renting with a public task, if distinguished	Renting without a public task, if distinguished			
		3%	9%	N/A	N/A	100%

## 2. Economic urban and social factors

### 2.1. Current situation of the housing market

- What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? To what extent do local market divergences play a role? Are there areas of growth and decline? What have been the effects of the current crisis since 2007?

The market supply of rental housing is sufficient. As it was mentioned above, people of Lithuania prefer having their own dwellings than living in a rented house. But it should be noted that the number of social housing and municipality owned shelters are not sufficient<sup>23</sup>.

It should be noted that local market divergences play a role in to the extant that in different periods of the year the demand for leased housing increases or decreases in different regions of the country.

The peak of the season of the rental housing in big cities, where the universities are located (Vilnius, Kaunas, Klaipėda, Šiauliai), is reached in the months of August – October, when the students come to study and search for housing to rent. In the Lithuanian resorts near the Baltic Sea the leasing housing demand increases in the summer season or before such holidays as the Christmas, the New Year, the St. Valentine's day, but it decreases after the summer season or after this holidays. The exception of the leasing housing demand instability in the reasorts of Lithuania is invisible in the reasorts of Druskininkai and Birštonas cities and the leasing housing demand there is stable because these resorts offer the SPA services which are attractive all the year – round.

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<sup>22</sup> Homepage of [Swedbank: about pluses and minuses of the dwelling rent and ownership](http://www.swedbank.lt/lt/articles/view/1647). Available at (in Lithuanian): <<http://www.swedbank.lt/lt/articles/view/1647>> (last visited 14 Mar. 2014).

<sup>23</sup>Homepage of the ministry of the Environment. Available at: <[http://www.am.lt/VI/article.php3?article\\_id=11543](http://www.am.lt/VI/article.php3?article_id=11543)> (last visited 25 Mar. 20142).

At the end of 2007, housing prices (for flats and houses) reached their peak. After economic crisis, in 2008 prices started to decrease almost all over Lithuania and real property market started showing signs of stagnation: the housing price growth subsided and the number of real property transactions decreased. After registering double-digit house price increases from 2003 to 2007, house prices started to decline in 2008 due to the global crisis.

- In 2013 housing market activity has almost reached pre-crisis levels<sup>24</sup>. How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?

In 2011 there were 30484 persons (families) who required social housing. According to the Housing Strategy of Lithuania, it is expected that the social housing market will increase by 4-5 percent by the year 2020, i.e. the social housing market is planned to be supplemented with 25-30 thousand new apartments.

- What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?

See Summary table 1, in Lithuania the number of families/households depending on rental housing constitute 12 percent of the tenure structure in Lithuania. The market supply of rental housing is sufficient. As it was mentioned above, people of Lithuania prefer having their own dwellings to living in a rented house. It should be noted that the number of social housing and municipality owned shelters are not sufficient.

Please find below the exact shortage of social housing.

#### **Persons (families) who required social housing at the end of the year**

	2007	2008	2009	2010	2011
<b>Lithuania</b>					
Total by list					
Persons (families) who required social housing	20 305	23 761	26 047	28 461	30 484
Number of family members	48 149	54 824	58 762	63 808	67 562

<sup>24</sup> Baltic Property Market Report 2013. Available at: <<http://www.investlithuania.com/files/files/PDF/BMPR-2013-01-E-final.pdf>> (last visited 03 Mar. 2014).

## Young families

Persons (families) who required social housing	6 747	7 433	8 097	8 813	9 345
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Number of family members	19 483	20 437	21 903	23 807	25 182
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## Orphans and children without parental custody

Persons (families) who required social housing	1 659	2 048	2 383	2 662	2 854
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Number of family members	2 285	2 767	3 239	3 644	3 952
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## Disabled persons (families)

Persons (families) who required social housing	3 474	4 148	4 329	4 441	4 561
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Number of family members	6 871	7 729	7 828	7 911	7 989
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## Common list (not included in any of the lists)

Persons (families) who required social housing	7 021	8 001	8 934	10 042	11 035
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Number of family members	13 590	14 204	15 294	16 840	18 034
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## Social housing renters having right to improve their housing

Persons (families) who required social housing	544	572	546	523	554
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Number of family members	1 655	1 768	1 709	1 717	1 834
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## Families raising 3 or more children (adopted children)

Persons (families) who required social housing	860	1 559	1 758	1 980	2 135
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Number of family members	4 265	7 919	8 789	9 889	10 571
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Please note that the definition of 'needs' should be understood as 'need of social housing' (there is no special need of housing without public task as it is sufficient). According to the criterias set by the Government of Lithuania, there are 14 municipalities (Akmenė, Druskininkai, Ignalina, Jonava, Joniškis, Jurbarkas, Kelmė, Lazdijai, Pasvalys, Rokiškis, Skuodas, Šalčininkai, Švenčionys, Mažeikiai) which are called as problematic municipalities, i.e. there are more people in these municipalities who require social housing than in other municipalities of Lithuania.

It should be noted that there are only 1,1 percent of total population of immigrant in Lithuania. There is no data about the need of rental housing for immigrants

## 2.2. Issues of price and affordability

- Prices and affordability:
  - What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).

According to the analysis, which was performed by one of the biggest real estate agency in Lithuania – UAB Ober-Haus<sup>25</sup>, the typical cost of rents varies according to the type of the dwelling and its location. Please find information about the typical costs of rents (in four biggest cities in Lithuania: Vilnius, Kaunas, Klaipėda and Šiauliai) in the tables attached below.

Rental prices of individual houses and dwellings (LTL <sup>26</sup> per month)	1 room		2 rooms		3 rooms	
<b>Vilnius</b>	From	up to	From	up to	From	up to
The city centre, oldtown,	600	1300	750	1700	850	2700
Prestigious districts	600	1100	700	1500	800	2400

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<sup>25</sup> Homepage of the one largest real estate agencies in the country. Available at (in Lithuanian): <http://www.ober-haus.lt/nauijenos/nekilnojamojo-turto-rinkos-tyrimai> (last visited 22 Feb. 2014).

<sup>26</sup> EUR 1 = LTL 3.4528. <http://www.ecb.europa.eu/stats/exchange/eurofxref/html/eurofxref-graph-ltl.en.html> (last visited 03 Mar. 2014).

Sleeping districts	500	900	600	1350	700	1500
	Avarage price	700 - 950	Avarage price	975 - 1225	Avarage price	1100 - 1775
	4 rooms and more		Individual house			
<b>Vilnius</b>	From	up to	From	up to		
The city centre, oldtown,	900	3700	2500	6500		
Prestigious districts	900	3300	2500	5500		
Sleeping districts	700	1800	1400	3000		
	Avarage price	1250 - 2300	Avarage price	2200 - 4500		

Rental prices of individual houses and dwellings (LTL per month)	1 room		2 rooms		3 rooms	
<b>Kaunas</b>	From	up to	From	up to	From	up to
The city centre, oldtown, Prestigious districts	500	900	700	1300	800	2000
Sleeping districts	350	600	450	800	500	1000
	Avarage price	475 - 700	Avarage price	625 - 1000	Avarage price	750 - 1400
	4 rooms and more		Individual house			

<b>Kaunas</b>	From	up to	From	up to
The city centre, oldtown, Prestigious districts	1000	2500	1500	4000
Sleeping districts	600	1100	1000	2300
	Avarage price	850 - 1750	Avarage price	1650 - 2750

According to the state social insurane fund board of Lithuania, the average salary is 2138 Lithuanian litas per month.

The average monthly salaries in the biggest cities of Lithuania are:

- 1) 2512,3 Lithuanian litas in Vilnius;
- 2) 2151,4 Lithuanian litas in Kaunas;
- 3) 2363,7 Lithuanian litas in Klaipėda;
- 4) 1930,9 Lithuanian litas in Šiauliai.

According to the data listed above, the rent to income ratio in the biggest cities is indicated below:

	1 room		2 rooms		3 rooms	
<b>Vilnius</b>	From	up to	From	up to	From	up to
Rent to income ratio (%)	28	38	39	49	44	71
Avarage rental price (LTL per month)	700	950	975	1225	1100	1775
	4 rooms and more		Individual house			

<b>Vilnius</b>	From	up to	From	up to
Rent to income ratio (%)	50	92	88	179
Average rental price	1250	2300	2200	4500

	1 room		2 rooms		3 rooms	
<b>Kaunas</b>	From	up to	From	up to	From	up to
Rent to income ratio (%)	22	33	29	46	35	65
Average rental price	475	700	625	1000	750	1400
	4 rooms and more		Individual house			
<b>Kaunas</b>	From	up to	From	up to		
Rent to income ratio (%)	40	81	77	128		
Average rental price	850	1750	1650	2750		

- To what extent is home ownership attractive as an alternative to rental housing

As it was mentioned earlier, eighty-eight percent of the Lithuanian population owns a house or a flat where they live and the remaining 12 percent rent, according to a survey released by Swedbank, one of the country's largest banks. As much as 96 percent of the population would want to live in their own property and those who rent a house or a flat see it as a temporary arrangement. The Lithuanian population's attitude on this issue differs very much from many of Western Europeans, to whom renting is a way of life.

- What were the effects of the crisis since 2007?

At the end of 2007, housing prices (for flats and houses) reached their peak. After economic crisis, in 2008 prices started to decrease almost all over Lithuania and real

property market started showing signs of stagnation: the housing price growth subsided and the number of real property transactions decreased. The world financial crisis materially affected the Lithuanian economy, including the real property market. In 2009 residential real property market experienced further significant price drops, the number of transactions plummeted and many of the developers of new residential real properties faced bankruptcies due to severely cut banks' financing and accumulating stock of unsold newly built flats, whereas the banking sector experienced significant level of defaults of mortgages. After registering double-digit house price increases from 2003 to 2007, house prices started to decline in 2008 due to the global crisis.

The housing market has not yet fully recovered since then, however in 2013 housing market activity has almost reached pre-crisis levels, i.e. in 2008, house prices fell by 13.7% (-20.5% inflation-adjusted); in 2009, house prices plunged by 30.3% (-31.2% inflation-adjusted); in 2010, house prices increased by a meagre 0.1% (-3.6% inflation-adjusted); in 2011, house prices rose slightly by 0.8% (-2.6% inflation-adjusted). In 2012, house prices dropped 1.4% (-4.1% inflation-adjusted)<sup>27</sup>.

### 2.3. Tenancy contracts and investment

- Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?

First of all, it should be noted that return for rental dwellings is not attractive in Lithuania because estimate rental yields rates are very low. For example in Kaunas it is about 7,4 percent, in Klaipėda 6,4 percent and in Vilnius only about 6 percent.

Comparing the data of rental incomes with the global trends, the rate of rental incomes in Lithuania is very low. According to the information, mentioned above, there are no interested investors in rental dwellings market<sup>28</sup>.

- In particular: What were the effects of the crisis since 2007?

As mentioned above at the end of 2007, housing prices (for flats and houses) reached their peak. After economic crisis, in 2008 prices started to decrease almost all over Lithuania and real property market started showing signs of stagnation: the housing price growth subsided and the number of real property transactions decreased. After registering double-digit house price increases from 2003 to 2007, house prices started to decline in 2008 due to the global crisis.

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<sup>27</sup> See Global Property Guide, "Lithuania's property market stabilizing": <<http://www.globalpropertyguide.com/Europe/Lithuania>> (last visited 14 Mar. 2014).

<sup>28</sup> See, for example, homepage of the one largest market research companies in the country Spekulantai.lt (please note that information is only in Lithuanian). Available at (in Lithuanian): <<http://www.spekulantai.lt/straipsniai/aktualijos/nt-rinka/straipsnis/20832/investuojame-i-nt-ismoktos-pamokos-ir-naujos-galimybes>> (last visited 25 Mar. 2014).



**The table below shows the changes in residential property rent levels, vacancies, property prices and volumes.**

<b>Residential property</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Rent levels %	29,0 -	10,0	-22,0	-18,5
Vacancies %	0,0	5,5	12,5	8,0
Property prices %	21,0	-20,0	-13,5	-15,5

It should also be noted that at the end of June 2009 it has been estimated that in five largest cities there were about 3500 unsold newly built flats, from which 2100 are from projects developed in 2008. Under current market conditions, it is particularly difficult to find tenants or buyers; even substantial cuts in rental or sales prices do not always help. Under these circumstances the supply of new flats in largest Lithuanian cities in 2009 and 2010 (compared to 2008) went down by 2,5-3 times.

- To what extent are tenancy contracts relevant to professional and institutional investors?

The tenancy contracts are not interesting to professional and institutional investors because, as mentioned above, estimated rental yields rates are very low and the return for rental dwellings is not attractive.

- In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?

It should be noted that in Lithuania there is no institute of Trust as understood in the common law. The lessor may use his income from the rent at his own discretion. But it is possible for the lessor to mortgage his future income from the rent for the security of his other obligations.

- Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?

Theoretically the lessor for the securitization of his demand's rights can use all kinds of security of obligations indicated in the Article 6.70 of the CC: the performance of obligations may be secured in accordance with a contract or laws in the form of penalty, pledge (hypothec), suretyship, guarantee or earnest money, or any other forms resulting from the contract. So the lessor can demand that the lessee gives the security for the performance of his obligations.

In practice the main mean of the security for the performance of the lessee's obligations for the lessor is the rent payment in advance. But the amount of such rent payment in advance is limited: under the Article 6.583 para 5 of the CC the lessor shall have no right to demand the payment of lease in advance, with the exception of the lease payment for the first month. It is very doubtful that the lessee would agree use other types of security because the majority of lessees have low incomes.

## 2.4. Other economic factors

- What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?

In Lithuania insurance is distinguished between insurance of home and insurance of housing loans<sup>29</sup>.

Insurance companies offer a wide range of services for home insurance<sup>30</sup>:

1. Buildings insurance of a building or a part thereof (immovable item) refers to an object created by means of construction operations using construction products and firmly connected to the ground, which cannot be relocated without changing its purpose and without substantially reducing its value and which is intended for meeting the household, economic and cultural needs of the insured. Buildings shall include the distribution systems which are located inside the borders the parcel of land where the covered building/-s is/are built and which are used for the operation of buildings and the interior installations, which are immovable by purpose and nature: fixed heating, water supply, sewerage and sprinkler system installations; geothermal heating, sun collectors; power installations of the building; fixed installations of the ventilation and air conditioning system; fixed equipment of property and fire protection.

2. Investments in the building insurance (or premises) refers to investments in the insured building (or premises) as well as in the installations located inside the building (sewerage facilities, etc.) made by the insured based on invoices for works delivered and/or materials acquired, including acquisition of such facilities for own funds. Investments in a leased out building (or premises) may be insured only where the insured is the tenant.

3. Home property insurance refers to movable items intended for home furnishing and for domestic use and consumption. Home property also includes work tools and equipment used by the Insured or their family for professional or business activity; borrowed property transferred to the insured with the right to use and manage it; furniture (including integrated), household equipment (including integrated), etc.; radio and television antenna installations (excluding those for common use); water vehicles not subject to registration with the Register of Inland Waterway Vessels; a reasonable quantity of vehicle spare parts, details and supplies (excluding starting keys, remotes and other additional equipment located in the vehicle), self-propelled multifunctional area management facilities, wheelchairs. Home property shall be insured only at the address specified on the insurance policy when it is located inside the buildings, except for radio and TV antenna equipment, which is attached to the exterior structures of the building.

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<sup>29</sup> Homepage of the Būsto Paskolų Draudimas UAB (in Lithuanian): <<http://www.bpd.lt/en/informacija/apie-mus.html>> (last visited 22 Oct. 2012).

<sup>30</sup> See for example services provided by Lietuvos Draudimas (in Lithuanian): <<http://www.ld.lt/>> (last visited 22 Oct. 2012).

4. Property owner liability insurance (This insurance is designed to compensate third parties with which property owner have caused insured property).

5. Additional insurance, subject to agreement between the insurer and the insured, may be provided against:

5.1. theft of a bicycle outside the boundaries of the insured site where left locked for a temporary period by the Insured or their family member in buildings (or on premises) or locked to other fixed objects in any other location of Lithuania;

5.2. accomodation costs (including breakfast) where the insured building becomes unfit for living after an insured event.

There is a special purpose company – UAB “Būsto Paskolų Draudimas” incorporated and operating according to the Resolution No. 739 of the Government of Lithuania on the approval of the Company for Housing mortgage Insurance<sup>31</sup>. The company is an insurance company incorporated by the Government of Lithuania; under cooperation agreements, it insures mortgages granted by banks or other credit institutions registered in Lithuania and intended for housing procurement, construction, reconstruction, refurbishment or procurement of land plots and housing construction and for modernisation of multi-apartment houses. Activities of the company contribute to effective solutions of the issues related to provision of housing to citizens of Lithuania and the issues related to modernisation of multi-apartment houses; the activities encourage banks to credit housing by creating more favourable credit conditions for mortgage recipients who intend to procure and update their housing.

These are the main types of insurance concerned with dwelling but it may also include other types of insurance indicated in the specific insurance contract.

- What is the role of estate agents? Are their performance and fees regarded as fair and efficient?

In Lithuania the real estate agents are considered as the members of the “liberal profession”, i. e. the State Tax Inspectorate explained that the real estate agents are responsible and professionally independent by providing intelligent services to customers and the public. It should be noted that income from “liberal profession” activities is taxed at 15 percent income tax rate, and other self-employment income of 5 percent income tax rate<sup>32</sup>.

The Lithuanian Association of Real Estate Agencies<sup>33</sup> was established in 2007 to unite the Lithuanian real estate agencies in a common goal - the creation of more favourable conditions for the development of real estate activity consisting prevention of illegal trade in real estate. Members of the Association may be legal persons engaged in or

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<sup>31</sup> The Resolution No. 739 of the Government of the Republic of Lithuania on the approval of the Company for Housing mortgage Insurance (18 June 1998). Official Journal, 1998, No. 57-1603.

<sup>32</sup> The State Tax Inspectorate explanation about the taxation of the individual activity (real estate agents activity). Available at (in Lithuanian): <<http://www.vmi.lt/lt/?itemId=101421>> (last visited 25 Mar. 2014).

<sup>33</sup> Homepage of the “Lietuvos nekilnojamojo turto agentūrų asociacija”, see (in Lithuanian): <<http://www.lnta.lt/>> (last visited 22 Oct. 2012).

intending to engage in mediation in the purchase, sale, or lease of assessing real property in favour Association activities and objectives.

## 2.5. Effects of the current crisis

- Has mortgage credit been restricted? What are the effects for renting?

The average mortgage loan amount since 2007 in Lithuania fell by more than a third while the age of borrowers has increased. Since 2007 the time period of all taken mortgage credits is about eight years shorter than before. These changes are largely due to a fall in house prices, declining incomes and the overall change in the borrowing environment. Currently, the mortgage credits in Lithuania are taken by young families (27-34 years old) whose income is higher than the average.

- Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?

Please note that there is no official information of the current figures on repossession.

- Has new housing or housing-related legislation been introduced in response to the crisis?

In response to the crisis new housing legislation has not been introduced. But it should be mentioned that a new project - the Law on the support for housing purchase or lease – is being prepared<sup>34</sup>. This new law will create favorable conditions for low-income families and individuals to have adequate housing. In addition to that, the law will establish state aid for the housing lease, for the housing acquisition and will create conditions to expand and legalize the rental housing market and reduce forced evictions. The new law will segregate the areas of public support for housing purchase or lease and for apartment buildings renovation (modernization) in the present these two areas are regulated in the same law – in the Law on the state support and will regulate the compensation for housing rent.

The Law on the Profit Tax<sup>35</sup> has been changed: the profit tax rate has been increased from 15 to 20 percent; the housing credit benefit was withdrawn, leaving the continuity of this benefit application. The Law on the Personal Income Tax has been changed: the personal income tax rate reduced to 15 percent, excluding income from distributed profits, subject to a 20 percent income tax rate; the procedure of the non-taxable income

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<sup>34</sup>Proposals for the draft law. Available at homepage of the Ministry of Social Security and Labour (in Lithuanian):

<<http://www.socmin.lt/lt/naujienos/pranesimai-spaudai/busto-nuomos-naujoves-mdef.html?backlink=%252FIt%252Fpaieska%252Fresults%252Fp0.html>> (last visited 25 Mar. 2014).

<sup>35</sup> Please read more in part 3.7 Taxation.

rate has been replaced – it applies only to low-income individuals and to employment-related income.

Collectively, these amendments to the laws are known as the Package of the changes of the tax laws. The Package is related with housing policy as it influences housing market: it influences sellers and lessors as should pay bigger taxes for the income from their housing activities. Such changes affected the housing market due to the opacity of the tax evasion. On the other hand, changes negatively affected tenants because they were withdrawn from housing credit benefit.

Summary table 2

	Landlord	Tenant	Explanation
Crisis effects	+	+	<u>Crisis effects for the landlords:</u> after economic crisis the housing price growth subsided and the number of real property transactions decreased. <u>Crisis effects to the tenants:</u> the rent prices decreased.
Return on investment	+		The return for rental dwellings is not attractive in Lithuania because estimate rental yields rates are very low.
Affordability		+	The affordability of the dwelling for tenants depends on the place and the size of a dwelling.
Local differences (in need, Rol and affordability)	+	+	In the biggest cities, i.e. Vilnius, Kaunas, Klaipėda, the the need and the Rol are higher than in other cities. It affects both the landlords and the tenants.
Insurance	+	+	Home insurance mostly impact landlords' and insurance of housing loans impact tenants.

## 2.6. Urban aspects of the housing situation

- What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)

According to the survey, prepared by Swedbank, most people, who are renting, are city residents. It should be mentioned that almost two-thirds of people (about 60 percent), who have rented apartments live in the biggest cities of Lithuania (Vilnius, Kaunas, Klaipėda). About one-third of people, who have rented apartments, live in the small cities, and only about one-tenth (about 9 percent), - live in villages.

- Are the different types of housing regarded as contributing to specific “socio-urban” phenomena, e.g. ghettoization and gentrification

In Vilnius city, in district of Kirtimai for about 50 years there has been a local Roma's settlement called Tabor. This encampment is a unique phenomenon in Lithuania and indeed in the other Baltic countries. Elsewhere, Roma's live in families, but also with other nationalities. Vilnius Roma's Tabor is completely separate – geographically, socially and culturally. Today in Tabor there are more than 500 Roma. The Tabor consists of three "zones": upper, lower and the remote encampment. The Tabor is a closed community. They are enclosed in the sense that Romas have virtually no links to the city and do not use the city's infrastructure<sup>36</sup>.

On February 2012, in Tabor 8 illegally built houses were demolished by initiative of Vilnius City Municipality.<sup>37</sup>

- Do phenomena of squatting exist? What are their – legal and real world – consequences?

There is no official information about such phenomena in Lithuania

## 2.7. Social aspects of the housing situation

- What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior?) In particular: Is only home ownership regarded as a safe protection after retirement?

In his own dwelling would like to live 96 percent country people, and the option to rent is as only a temporary solution.

The lease is preferred by 18-35 years old people, who have not yet developed their families, who have lower-than-average (up to 1,000 Lithuanian litas per month) income. Two-thirds of them live in cities. The reasons for deciding to rent a flat can be divided into 3 groups. Women prefer to rent dwelling if they temporarily settle in a particular area. Usually middle-income people would choose to rent dwelling when they search to acquire appropriate house, and young families and younger people prefer the lease

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<sup>36</sup>First Romany Internet site, see (in Lithuanian): <<http://www.roma.lt/v2/index.php?andrius-kaluginas-taboras>> (last visited 29 Oct. 2012).

<sup>37</sup>The decision of the court: three illegal houses in the Tabor must be demolished. See (in Lithuanian)(in Lithuanian):<[http://www.spec.lt/lt/Tabore\\_nugriauti\\_trys\\_nelegalus\\_statiniai](http://www.spec.lt/lt/Tabore_nugriauti_trys_nelegalus_statiniai)> (last visited 29 Oct. 2012).

when they accumulate down payment for own home purchase. As a matter of fact only home ownership is regarded as a safe protection for entire life<sup>38</sup>.

- What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatised apartments in former Eastern Europe not feeling and behaving as full owners)

The homeownership is the most attractive tenure type in Lithuania. So home owners feel stable and confident no matter how they gained ownership of the housing – they have purchased it or received it by the privatization. The tenants in Lithuania feel unsafe and they intend to have their own housing.

It should be mentioned the social-psychological phenomenon exists related to the privatization of apartments in the block of flats: the mentality of many owners of the apartments, remain as being tenants, i. e. they do not care about the block common matters – about the cleaning of the staircases, forecourt and so on.

Summary table 3

	Home ownership	Renting with a public task	Renting without a public task
Dominant public opinion	The most attractive tenure in Lithuania	Assessed as suited to low – income people. The Lithuanian society often associated this form of tenure with asocial persons.	Assessed as a temporary solution until own housing acquisition.
Tenant opinion	The majority of tenants seek to acquire their own housing.	For the tenants this forme of tenure is attractive for lower costs, but jointly it is unacceptable for the negative opinion of the society.	The majority of tenants assess renting as a temporary solution.
Contribution to gentrification?	In the neighbourhoods which, are considered to be prestigious high-income people seek to acquire	_____	_____

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<sup>38</sup> Homepage of „Swedbank“: about pluses and minuses of the dwelling rent and ownership. Available at (in Lithuanian): <<http://www.swedbank.lt/lt/articles/view/1647>> (last visited 29 Oct. 2012).

	housing and lower-income and anti-social neighbor leave.		
Contribution to ghettoization?	People avoid acquiring their housing in Roma neighborhoods.	People avoid rented housing in Roma neighborhoods.	People avoid rented housing in Roma neighborhoods.
Squatting?	N/A	N/A	N/A



### **3. Housing policies and related policies**

#### **3.1. Introduction**

- How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?

The Ministry of Social Security and Labour of Lithuania, which is responsible for the (national) welfare state, takes care of some housing policy aspects – specifically of Government-sponsored mortgage programs.

The Law on state support set two forms of state supports to individuals and families who have a permanent residence in Lithuania:

- 1) municipal social rented housing,
- 2) support for housing purchase, construction (reconstruction).

Low-income persons (families) may apply to the municipal for rented social housing. Families and individuals in accordance with the provisions of the Law on state support, may be entitled to the municipal social housing or the improvement of their existing housing situation. There must be a written request, recorded in the municipal executive authority, from a person (a family member - one of the spouses), who has, according to the Law on state support on state support, a declared place of residence, within the municipality in which they live. Along with the application, additional documentation proving entitlement to social housing or improvement of their housing conditions shall be submitted.

Families and individuals, which meet the criteria can receive state-sponsored mortgage loan and take advantage of the support, i.e. grant to pay part of the mortgage loan, which is given to the borrowers if they've got the state-sponsored housing loan from banks in accordance with the municipal state-backed mortgage loan limit<sup>39</sup>.

In 2012 the state began to subsidize lower-income people's first home purchase. All residents have the right to state support for housing; and they may apply for state-sponsored housing credits.

Government-supported mortgage loans are designated for socially disadvantaged people with housing needs. Lithuania State returns to the bank of 10 to 20 percent of the amount of the loan, when persons are eligible for the State support according the Law on state support<sup>40</sup>.

#### **The main state-sponsored housing loan conditions**

The loan can be granted:

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<sup>39</sup> The Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania (amended and supplemented). Official Journal, 2002, No. 116-5188.

<sup>40</sup> About the interest on the loan for housing construction or acquisition please see at the homepage of the the State Tax Inspectorate. Available at (in Lithuanian): <<http://www.vmi.lt/lt/?itemId=1014243>> (last visited 5 Nov. 2012).

- to buy or build the dwelling if the property of the dwelling will be transferred to the borrower in 2012;
- for house construction;
- for dwelling reconstruction;
- for dwelling adaptation for needs of the disabled.

Loans are made in Lithuanian litas and euros. The maximum term of a mortgage is 40 years and the minimum is 5 years.

Such loans shall not exceed:

- 180,000 Lithuanian litas or the equivalent in euros – for a single person with no family;
- 300,000 Lithuanian litas or the equivalent in euros – for family of two or more people;
- 120 000 Lithuanian litas or the equivalent in euros – for housing reconstruction, as well as housing adaptation for disabled, incapacitated or partially disabled person's needs, regardless of the number of persons in family.

In addition, the housing loan amount will depend on:

- fixed monthly income received and existing obligations size;
- purchased dwelling market values and age of person or estimated value of house construction.

On 1 January 2009 the Law on Profit Tax of Republic of Lithuania came into force and the housing credit benefit was withdrawn.

Residents of Lithuania can subtract paid interests of his annual taxable income only if:

- until December 31 2008 they took credit for one dwelling construction or purchased and made a written agreement for dwelling construction or acquisition or
- until December 31 2008 they made a lease (leasing) contract for one dwelling lease (leasing) and made a written agreement for dwelling construction or acquisition.

In this case, if a resident of Lithuania until 1 January 2009 had taken more than one loan for the construction or acquisition of dwelling or (and) has made more than one dwelling lease (leasing) contract, in the year 2009 and subsequent fiscal periods, he will be able to deduct the interest paid only for one credit (or part thereof) or for a lease (leasing) contract.

This exemption applies only to interest paid to banks, other credit institutions or foreign funds and state-owned financial institutions, of which more than 50 percent of shares (shares) package holders are foreign governments, or interest paid to a financial company for one dwelling finance lease (leasing).

- What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)

The Constitution of Lithuania<sup>41</sup> (Article 24) guarantees the right of dwelling immunity (inviolability), i.e. it does not directly include the right for dwelling. Article 52 guarantees the social support of the State. It could be said, that the right for dwelling is derivative from the following rights, mentioned in this Articles of the Constitution of Lithuania<sup>42</sup>.

#### *Article 24*

The home of a human being shall be inviolable.

Without the consent of the resident, entrance into his home shall not be permitted otherwise than by a court decision or the procedure established by law when this is necessary to guarantee public order, apprehend a criminal, save the life, health, or property of a human being.

#### *Article 52*

The State shall guarantee to citizens the right to receive old age and disability pensions as well as social assistance in the event of unemployment, sickness, widowhood, loss of the breadwinner, and in other cases provided for by laws.

### **3.2. Governmental actors**

- Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?
- National levels of government involved in housing policy: Parliament of Lithuania (Seimas of Lithuania), Government of Lithuania, Ministries of Lithuania (Ministry of Social Security and Labour, Ministry of Finance, Ministry of Environment, Ministry of Justice, Ministry of the Interior of Lithuania)
- Regional levels of government involved in housing policy: 10 Counties County of Vilnius, County of Kaunas, County of Klaipėda, County of Alytus, County of Utena, County of Panevėžys, County of Telšiai, County of Šiauliai, County of Tauragė, County of Marijampolė)
- Local levels of government involved in housing policy: 60 Municipalities.
- Which level(s) of government is/are responsible for designing which housing policy (instruments)?

National, regional and local levels of government are responsible for designing housing policy instruments. Regional and local levels of government submit the proposals for housing policy and the national level of government adopts legal acts.

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<sup>41</sup>The Constitution of the Republic of Lithuania. Official Journal, 1992, No. 33-1014.

<sup>42</sup>The Constitution of the Republic of Lithuania came into force on 2 November 1992. See (in Lithuanian): <http://www3.lrs.lt/home/Konstitucija/Constitution.htm> (last visited 5 Nov. 2012).

- Which level(s) of government is/are responsible for which housing laws and policies?

For housing laws and policies are responsible national levels of government.

The Parliament of Lithuania has legislative right – this institution legislates housing laws.

The Government of Lithuania implements laws and resolutions of the Parliament concerning the implementation of laws, submits laws projects to the Parliament.

The Ministry of Social Security and Labour<sup>43</sup> shall carry out state governance functions in the areas of social security and labour assigned to it by laws. It carries out the questions of the housing support. It's Department of housing support ensures policies, regulation and development of public support for housing and rent; analyses the State support for housing and rent policies and provide the Government proposals for policy development; coordinates state support for housing or rental policies in the municipalities.

The Ministry of Finance<sup>44</sup> controls financial services which refer to banking, credit, insurance, investment, payment, and similar services, relevant for the housing policies.

The Ministry of Environment<sup>45</sup> forms public policy and supervision of the construction, housing and organizes, coordinates and supervises its implementation; aims to create favorable conditions for the country's residents to purchase housing; prepares draft legislation, planning documents of architecture and urban planning, construction and maintenance, housing issues, or participate in its development, organizes, coordinates and controls the planning document's implementation; exercises in range of its competention the housing strategy and program implementation arrangements, housing strategy's and program implementation's monitoring; prepares for the Government proposals for support for housing.

The Ministry of Justice prepares the draft legislation of housing.

The Ministry of the Interior of Lithuania<sup>46</sup> is responsible for regional development legislation<sup>47</sup>.

### 3.3. Housing policies

- What are the main functions and objectives of housing policies pursued at different levels of governance?

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<sup>43</sup> Homepage of the Ministry of Social Security and Labour, see: <<http://www.socmin.lt/en/home.html>> (last visited 29 Oct. 2012).

<sup>44</sup> Homepage of the Ministry of Finance, see: <<http://www.finmin.lt/web/finmin/home>> (last visited 5 Nov. 2012).

<sup>45</sup> Homepage of the Ministry of Environment, see: <<http://www.am.lt/VI/en/VI/index.php>> (last visited 5 Nov. 2012).

<sup>46</sup> Homepage of the Ministry of the Interior of Lithuania, see: <<http://www.vrm.lt/nrp/index.php?id=2444>> (last visited 5 Nov. 2012).

<sup>47</sup> The Law on Regional Development of the Republic of Lithuania (amended and supplemented). Official Journal, 2000, No. 66-1987.

At national level of governance housing policies are created, formed and confirmed. At this level are formed general principals, rules, goals, instruments, and functions of different institutions.

At regional and local levels of governance housing policies and instruments are implemented and executed. At this level the projects of policies and instruments are prepared and are submitted to the national level of governance.

- In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation))?

The Lithuanian Housing Strategy declares that one of its goals is to expand housing options for all social groups. It is necessary to increase the diversity of housing products, to ensure the possibility of different income households (families) to select suitable housing:

- it is particularly important to increase the supply of non-profit and social housing to medium-and low-income households. Cheap rental housing is very important for young people who are not entrenched in the labour market and do not have a permanent residence. It is necessary to make rental housing in 2020 account for 18 percent of the total housing stock (in 2003 it was 10 percent), the EU average – 30 percent, from this housing social housing amount must be – 4-5 percent (EU average – 15-20 percent);
- it is necessary to construct more new dwellings for middle-and high-income households to buy or rent better dwellings, to increase the annual construction volume from the current – about 12.000-15.000 apartment in 2020. In order to reduce construction costs, the measures for land acquisition and infrastructure development to reduce the cost of construction competitiveness and transparency will be provided;
- increased financial support will be provided to low-income households – to cover part of their housing and rental costs, especially for families with children and disabled persons.

Therefore the national policy does not favour certain types of tenure: the goal of the Lithuanian Housing Strategy is to develop different housing tenure forms in order to ensure all social groups interests.

- Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?

The answer in this question can be dual. It depends on that how we understand the concept of “the vacancy”.

At first, if we interpret that “the vacancy” means the dwellings which have its owners, but only are not inhabited, in Lithuania there are no special measures against vacancies. Owners of vacancies must pay real estate taxes, maintain a safe condition of vacancies like owners who live in their dwellings, i. e. they must execute all duties which are indicated in laws for real estate owners.

Secondly, if we understand that “the vacancy” is an empty building, which does not have its owner, i.e. derelict, there is special regulation in Lithuania. The Article 4.57 of the CC, the Rules, approved by the Resolution No 634 by the Government of Lithuania, 26 May 2004<sup>48</sup>, and the Order No D1-449 of the Minister of Environment, 16 September 2005<sup>49</sup>, set special regulation of the derelict. The State Tax Inspectorate or the institutions of the State or Municipalities administer the dwellings, which are the derelict.

Dwelling's recognition derelict process is initiated by the Municipality or public authority, or by the natural or legal person whose possession the dwelling is or becomes aware of the existence of such a dwelling. This process is initiated when a person notify the State Tax Inspectorate or the institutions of the State or Municipalities. Such institution after one year from the date on which the derelict item included in its accounts, filed a court statement. The court may decide to pass the derelict dwelling to the State or the Municipality. Derelict dwellings are realized by selling them in the auction.

- Are there special housing policies targeted at certain groups of the population (e.g. migrants, Sinti and Roma etc)?

There exist housing policies targeted at foreigners who have been granted asylum in Lithuania and at the Roma.

Foreigners who have been granted asylum in Lithuania at first are accommodated in the Refugee Reception Centre at Rukla city for 6 – 12 months. Then those foreigners receive a single grant for settlement and grant for the dwelling lease. This housing policy is regulated by the Order No A1-238 of the Minister of Social Security and Labour, 21 October 2004<sup>50</sup>.

Roma, as mentioned in the Part 1.3, live in their settlement called Tabor<sup>51,52</sup>. In the Integration of Roma into Lithuanian Society for 2012-2014 year activities plan, approved by the Order No JV-196 of the Minister of the Culture, 20 March 2012<sup>53</sup>, there is no policy about Roma's housing. Most Roma speak about social housing grant for Roma

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<sup>48</sup> The Resolution No. 634 by the Government of the Republic of Lithuania on the rules of the derelict, seized, deceased assets transmission and accounting (26 May 2004). Official Journal, 2004, No. 86-3119.

<sup>49</sup> The Order No. D1-449 of the Minister of Environment of the Republic of Lithuania on the approval of the registration procedures of the buildings without owners (16 September 2005). Official Journal, 2005, No. 113 -4143.

<sup>50</sup> The Order No. A1-238 of the Minister of Social Security and Labour of the Republic of Lithuania on the approval of the description for State support for the integration of foreigners (21 October 2004). Official Journal, 2004, No. 157 -5741.

<sup>51</sup> Gypsy community president Joseph Tychina: about Tabor in Vilnius. Available at (in Lithuanian): <<http://www.15min.lt/naujiena/aktualu/lietuva/cigonu-bendrijos-prezidentas-josifas-tycina-kazkam-naudinga-kad-taboras-vilniuje-egzistuoti-56-195656>> (last visited 5 Nov. 2012). Also see: Report on Roma housing. Available at (in Lithuanian): <<http://www.ces.lt/2009/01/fra-ataskaita-apie-romu-busta-romu-ir-klajokiu-socialine-atskirtis-ir-diskriminacija-busto-srityje/>> (last visited 5 Nov. 2012).

<sup>52</sup> <

<sup>53</sup> The Order No. JV-196 of the Minister of the Culture of the Republic of Lithuania on the approval of the Integration of Roma into Lithuanian Society for 2012-2014 year activities plan (20 March 2012). Official Journal, 2012, No. 36 -1813.

people, but 64,6 percent of habitants do not want to live in the neighbourhood with Roma<sup>54</sup>.

### 3.4. Urban policies

- Are there any measures/ incentives to prevent ghettoisation, in particular

Yes, there are certain measures<sup>55</sup> (the measures are listed below).

- mixed tenure type estates<sup>56</sup>

It exists. Very often in the same building are two types of apartments: rented and owner-occupied. Rented apartments are not separated from owner-occupied apartments in Lithuania. There is no special regulation by the government on this tenure type.

- “pepper potting”<sup>57</sup>

It does not exist. Municipalities rent social housing flats only for people who are registered in special list for obtaining social flat<sup>58</sup>.

- “tenure blind”<sup>59</sup>

The Municipalities rarely rent social flats in the buildings in which there are also non-social purpose flats.

- public authorities “seizing” apartments to be rented to certain social groups

It does not exist.

Other “anti-ghettoisation” measures could be: lower taxes, building permit easier to obtain or, in especially attractive localisation - as a condition to obtain building permit, condition of city contribution in technical infrastructure.

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<sup>54</sup> Organizations working with Roma: “It is time for Roma integration”. Available at (in Lithuanian): <<http://www.bernardinai.lt/straipsnis/2012-03-25-atejo-laikas-romu-integracijai/79371>> (last visited 5 Nov. 2012).

<sup>55</sup> About the current state of the housing at the homepage of the Ministry of the Environment. Available at (in Lithuanian): <[http://www.am.lt/VI/rubric.php3?rubric\\_id=1014](http://www.am.lt/VI/rubric.php3?rubric_id=1014)> (last visited 5 Nov. 2012).

<sup>56</sup> Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenised communities, and to strengthen diversification of housing supply.

<sup>57</sup> This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.

<sup>58</sup> Please see at the homepage of the Ministry of Environment (in Lithuanian): <[http://www.am.lt/VI/rubric.php3?rubric\\_id=1014](http://www.am.lt/VI/rubric.php3?rubric_id=1014)> (last visited 5 Nov. 2012).

<sup>59</sup> This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable from outside. It is used to avoid/minimize stigmatization and social exclusion, which could be caused by living in a (openly identifiable) social stock.

It does not exist.

- Are there policies to counteract gentrification?

There are no such policies, although the phenomenon of gentrification exists in the biggest cities, but it is not officially recognized as a problem. For example, in Vilnius this phenomenon can be found in Užupis and Žvėrynas neighbourhood<sup>60</sup>. These neighbourhoods are the oldest neighbourhoods in the city, which are situated in the most attractive location of the city – the Užupis neighbourhood is situated in old town and the Žvėrynas neighbourhood is situated in the center of Vilnius. Both areas are near the river. Therefore, today these neighbourhoods are considered to be prestigious. The media very often report that low-income residents, who live in these neighbourhoods, receive proposals to sell their houses and if they do not agree with such proposals their houses are fired by unknown persons<sup>61</sup>.

- Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (Does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)

The housing should correspond to Hygiene standards, approved by the orders of the Minister of Health of Lithuania, and to Construction Technical Regulations, approved by the orders of the Minister of Environment of Lithuania<sup>62</sup>. These standards indicate technical requirements and other special requirements for the dwelling that it could be possible to live. These standards are verified and controlled in two ways<sup>63</sup>. Firstly, according to the Law on the construction of Lithuania<sup>64</sup>, when the construction of dwelling is terminated, the dwelling must be assessed by special institutions (always – by the State Territorial Planning and Construction Inspectorate; by the State Energy

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<sup>60</sup>About the gentrification in Vilnius city see (in Lithuanian): <<http://www.delfi.lt/news/daily/crime/zveryno-gyventojai-itaria-padegima-sudege-dvieju-butu-namas.d?id=54540953>> (last visited 5 Nov. 2012).

<sup>61</sup>About the gentrification in Vilnius city see (in Lithuanian): <<http://www.balsas.lt/naujiena/219855/vel-liepsnoja-namai>> (last visited 26 Nov. 2012).

<sup>62</sup>About the means of control and regulation of the quality of private rented housing or is quality see (in Lithuanian): <[http://lt.lt.allconstructions.com/portal/categories/35/1/0/1/article/4511/gyvenamuju-namunaudojimo-ir-prieziuros-privalomieji-reikalavimai-ir-ju-igyvendinimo-tvarka](http://lt.lt/allconstructions.com/portal/categories/35/1/0/1/article/4511/gyvenamuju-namunaudojimo-ir-prieziuros-privalomieji-reikalavimai-ir-ju-igyvendinimo-tvarka)> (last visited 26 Nov. 2012).

<sup>63</sup>About the means of control and regulation of the quality of private rented housing or is quality see (in Lithuanian): <<http://www.namupridavimas.lt/statybos-uzbaigimas-namu-pridavimas-valstybinei-komisijai.html>> (last visited 26 Nov. 2012).

<sup>64</sup>The Law on the construction of the Republic of Lithuania (amended and supplemented). Official Journal, 1996, No. 32-788.



Inspectorate; by the Public Health Centre; by the State Fire Supervision; in some cases – by the Regional Environmental Protection Department; by the Disability Organization; by the Municipality's authorized representative), which must confirm that dwelling is suitable to use. Secondly, there is the Construction Technical Regulation STR 1.12.05:2002<sup>65</sup>, approved by the order of the Minister of Environment of Lithuania No 351, 1 July 2002, which indicates the procedure and mandatory requirements for the dwellings use and maintenance. According to this Technical Regulation the owners of dwellings must periodically hire specialists who verify if the dwelling corresponds to special requirements.

- Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanisation and periurbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)

It should be noted that in Lithuania there is a public authority – the National Regional Development Agency<sup>66</sup>, which operates to influence the social and economic development policy initiatives in the regions (Counties).

The National Regional Development Agency implements the Law on Regional Development, the Resolution No 575 of the Government of Lithuania on the approval of the Lithuanian regional policy until 2013 strategy, 23 May 2005<sup>67</sup>, and the Resolution No 62 of the Government of Lithuania on the approval of the Regional social and economic inequalities reduction program for 2012-2013 years, 17 January 2011<sup>68</sup>. The priority of the Lithuanian regional policy until 2013 strategy is equivalent with Lithuanian territorial economic development, so it does not focus on housing policy<sup>69</sup>. The Regional social and economic inequalities reduction program for 2012-2013 years touches some housing policy aspects<sup>70</sup>. For example, among its objectives it is upgrade of multi-residential buildings and the development of social housing in problem areas.

Law on the Real Property Tax established that real estate tax rate is in the range from 0.3 percent to 1 percent (from 1 January 2013 – the range will be from 0,3 to 3 percent) of the real property value. The concrete rate of the tax is established in each Municipality in the light of one or more of the following criteria: real estate purpose, use,

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<sup>65</sup> The order of the Minister of Environment of the Republic of Lithuania No. 351 on the approval of the Construction Technical Regulation STR 1.12.05:2002 (1 July 2002). Official Journal, 2002, No. 81 -3504.

<sup>66</sup> About the National Regional Development Agency please see at the homepage of the Ministry of the Environment (in Lithuanian): <<http://www.nrda.lt/apie.php>> (last visited 26 Nov. 2012).

<sup>67</sup> The Resolution No. 575 of the Government of the Republic of Lithuania on the approval of the Lithuanian regional policy until 2013 strategy (23 May 2005). Official Journal, 2005, No. 66 -2370.

<sup>68</sup> The Resolution No. 62 of the Government of the Republic of Lithuania on the approval of the Regional social and economic inequalities reduction program for 2012-2013 years (17 January 2011). Official Journal, 2011, No. 8 -346.

<sup>69</sup> The Lithuanian regional policy's until 2013 strategy. Available at (in Lithuanian): <<http://www.vrm.lt/nrp/index.php?id=168>> (last visited 26 Nov. 2012).

<sup>70</sup> The Law on the regional development. Available at (in Lithuanian): <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=371054](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=371054)> (last visited 26 Nov. 2012).

legal status, its technical characteristics, tax payer categories (size or legal form, or social position) or the Municipality's territory where the real property is located. Consequently it could be said that In Lithuania there is some indirect form of prevention of suburbanisation and periurbanisation and there is distribution of local taxes so that villages can afford the limitation of housing areas, because in some Municipalities real property taxes are lower and this factor promotes residents for acquire housing where they will pay less taxes and therefore abandon the idea of buying housing where taxes are higher<sup>71</sup>.

### 3.5. Energy policy

- To what extent do national and or local energy policies affect housing?

It should be mentioned that national and local energy policies affect housing in the spheres of the energy utility requirements of the dwellings, requirements for the dwellings modernization, etc.

#### *National energy policies.*

At the national energy policies level resolutions of the Government, the laws by the Parliament and the orders of the ministers affect housing.

The Resolution No. 60 by the Government of Lithuania on the approval of the Lithuania's dwelling strategy<sup>72</sup> establishes that the ineffective use of the energy in the dwellings is very serious problem and one of the Strategy's aims is to stimulate the economy of the energy resources in the dwellings. The Strategy provides for the modernization of dwellings. These dwellings must reduce energy's use costs. The strategy also provides for the financing from the State budget of the experimental project of the energy saving in dwellings. The Strategy indicates that in achieving of these targets both the national levels of authorities (the Ministry of Finance, the Ministry of Environment, the Ministry of Energy, the Ministry of Economy) and local levels of authorities (Municipalities) are responsible. According to the Strategy its aims must be totally achieved by 2020.

The Resolution No. X-1046 of the Government of Lithuania on the approval of the national energetics strategy<sup>73</sup> states that the major problem in the heating system is inefficiency at the point of consumption – the average yearly heat consumption of Lithuanian buildings is 209 kWh/m<sup>2</sup>, which is substantially higher than the average of Nordic countries (128 kWh/m<sup>2</sup>). Moreover most of the consumers in old dwellings cannot independently regulate temperature. Also the strategy aims to reduce the price of electricity, gas and heat.

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<sup>71</sup>About real estate taxes at homepage of the State Tax Inspectorate (in Lithuanian): <<http://www.vmi.lt/lt/?itemId=10129904>> (last visited 26 Nov. 2012).

<sup>72</sup>The Resolution No. 60 by the Government of the Republic of Lithuania on the approval of the Lithuania's dwelling strategy (21 January 2004). Official Journal, 2004, No. 13-387.

<sup>73</sup>The Resolution No. X-1046 of the Government of the Republic of Lithuania on the approval of the national energetics strategy (18 January 2007). Official Journal, 2007, No. 11-430.

The Law on the construction of Lithuania states that all new dwellings and dwellings which are in the process of modernization must meet the requirements of the category of the appropriate energetical usefulness.

The Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania<sup>74</sup> that the aim of the modernization (renovation) of the dwellings is the improvement of the dwelling's energetic characteristics and/or the surety of the use of energy which is get from the shifting energy sources.

The Construction Technical Regulations approved by the orders of the Minister of Environment of Lithuania establishe:

- the procedure to qualify for a right to certify energy performance of buildings<sup>75</sup>;
- the building's fundamental requirement of the energy's economy and preservation of warm<sup>76</sup>;
- the energy performance of buildings and certification of energy performance<sup>77</sup>.

The Ministry of Environment of Lithuania in 2013 January began the foundation of the Agency of Energy Saving, which will plan and coordinate the entire dwelling's renovation process and its leadership. The Agency will conclude the contracts with local governments and local companies, which administer the dwelling's renovation.

#### *Local energy policies.*

The Municipalities now are acting very assertively in the local energy policies level for housing. It should be noted that until 2011 the Law on the Place's Self-government of Lithuania<sup>78</sup> established the duty of Municipalities to organize and to ensure the central heating supply to consumers. Other energy infrastructure (gas, electricity) development was planned and implemented at the national level and Municipalities were only projects combining institutions.

In 2011 May the Law on the energy from the shifting energy sources of Lithuania<sup>79</sup> has introduced new energy sector planning requirements for Municipalities. The Article 12 of

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<sup>74</sup>*Ibid* 39.

<sup>75</sup> The order of the Minister of Environment of the Republic of Lithuania No. D1-972 on the approval of the description of the procedure to qualify for a right to certify energy performance of buildings STR 1.02.09:2011 (14 December 2011). Official Journal, 2011, No. 157-7448.

<sup>76</sup> The order of the Minister of Environment of the Republic of Lithuania No. D1-131 on the approval of the building's fundamental requirement of the energy's economy and preservation of warm STR 2.01.01(6):2008 (12 March 2008). Official Journal, 2008, No. 35-1255.

<sup>77</sup> The order of the Minister of Environment of the Republic of Lithuania No. D1-624 on the approval of the energy performance of buildings. Certification of energy performance STR 2.01.09:2005 (20 December 2005). Official Journal, 2005, No. 151-5568.

<sup>78</sup> The Law on the Place's Self-government of the Republic of Lithuania (amended and supplemented). Government Journal, 1994, No. 55-1049.

<sup>79</sup> The Law on the energy from the shifting energy sources of the Republic of Lithuania (amended and supplemented). Official Journal, 2011, No. 62-2936.

the Law stipulates that Municipalities prepare and, in agreement with the Government or its authorized institution:

- approve and implement renewable energy development action plans;
- organize the supply of heat energy for the Municipality, to the heat energy to be from renewable energy resources;
- develop and maintain local renewable energy resource development funding programs and funds procedure;
- provide advice and organize training programs on renewable energy development and utilization of the benefits and practicalities, and perform other functions prescribed by the Law.

Summary table 4

	National level	Regional Level	Local (lowest) level
<p>Policy aims</p> <p>1) To expand housing options for all social groups.</p> <p>2) To ensure efficient use of existing housing, its maintenance, renovation and modernization.</p> <p>3) To strengthen the housing sector subject's abilities to participate in the housing market in order to create a harmonious state, municipal and community levels housing management system and their interaction mechanism to ensure the protection of consumer rights, as well as informing the public, permanent housing sector participants training and education.</p> <p>4) To stimulate the economy of the energy resources in the dwellings and to execute the modernization of the dwellings which must reduce the energy's use costs.</p>	<p>+</p> <p>+</p> <p>+</p> <p>+</p>	<p>+</p> <p>+</p> <p>+</p> <p>+</p>	<p>+</p> <p>+</p> <p>+</p> <p>+</p>
<p>Laws</p> <p>1) Laws of the Parliament</p> <p>2) Resolutions of the Government</p> <p>3) Orders of the Ministers</p>	<p>+</p> <p>+</p> <p>+</p>	<p>+</p> <p>+</p> <p>+</p>	<p>+</p> <p>+</p> <p>+</p>

4) Orders of the Municipalities heads			+
<p>Instruments</p> <p><b>Instruments for the rental housing sector development</b></p> <p>1) The strengthening of the legal private housing landlords and tenants relations guarantees, and the setting quality standards for rental housing.</p> <p>2) The creation of opportunities for low-income households (families) to rent housing in the private sector – to cover from the Lithuanian state budget and municipal budgets a part of the rent (in conjunction with this measure the aspects of social housing demand and it's development).</p> <p>3) The formation of legal and economic conditions for the establishment of non-profit rental housing sector. This property would be given to households with an average income insufficient to acquire their own housing, but too big to be allowed to rent a social housing for low-income households. Non-profit housing sector will be developed by housing associations – a non-profit organizations supported by Municipalities and the State.</p> <p>4) The buying of low demand housing on the market, updating it and adapting it to the social housing needs.</p> <p><b>Instruments for the new housing construction</b></p> <p>1) The determination of the most appropriate ways to finance and to use areas to be built and of the better way to use the urban land.</p> <p>2) The standardization of the establishment and operation of housing associations (cooperatives).</p> <p>3) The requirements of energy' saving.</p> <p><b>Instruments for enlargement of housing credit market efficiency</b></p> <p>1) The extension and improvement of the mortgage bonds and mortgage credit system to encourage commercial banks to raise long-term financial resources for housing credits.</p> <p>2) The creation of the legal conditions for the establishment of credit information bureaus.</p> <p><b>Instruments for effective and targeted support for</b></p>	<p>+</p> <p>+</p> <p>+</p> <p>+</p> <p>+</p> <p>+</p> <p>+</p> <p>+</p> <p>+</p> <p>+</p> <p>+</p>	<p>+</p>	<p>+</p>

<b>housing</b>	+		+
1) The improving of the existing Law on the State support for housing purchase or lease and of the Law on of the Personal Income Tax.			
2) The coverage from the State budget funds of housing loans granted to the first appropriate housing, insurance premiums, or part thereof.	+	+	+
3) The coverage from the State budget of credit for the target social groups: orphans, the disabled, families with children.	+	+	
4) The calculation of income tax: to deduct from income the interests paid for the credit of housing construction or acquisition.	+		
<b>Instruments for multifamily residential care administration</b>			
1) The preparation and the improvement of residential care technical regulations and rules.	+		
2) The installation of the building maintenance manager licensing system.	+		+
<b>Instruments for residential renovation and modernization</b>		+	
1) The creation of financial support system for low-income households, implementing efficient apartment building renovation and modernization projects.	+		
2) The requirements of energy's saving for renovating dwellings.	+		+
<b>Instruments for the support of housing for low-income households and social cohesion</b>			
1) The restructuring of the compensation system of the housing maintenance costs.	+		+
2) The promotion of greater use of various forms of rent.	+	+	+
3) The promotion of local initiatives to rehabilitate housing and living environment.		+	+
<b>Instruments for sustainable housing management system</b>		+	
1) The expansion of Municipalities functions related to the implementation of housing policy.	+	+	+
2) The establishment of a non-governmental housing management bodies and improve their business		+	+

performance.			
<b>Instruments for public information and education</b>			
1) The creation of permanent system of the public information for the housing policy.	+	+	+
2) The creation of the system for housing sector participant's continuous training and education.	+		+

### 3.6. Subsidization

- Are different types of housing subsidized in general, and if so, to what extent? (give overview)

According to the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) (hereinafter – the Law)<sup>80</sup> and the Resolution No 1162 of the Government of Lithuania on the approval of the Description of the procedure of the provision of State supported housing credits, 23 October, 1997<sup>81</sup>, there are such forms of State support (subsidies) for housing acquisition or rent:

- (i) the housing mortgage insurance premium or its part are paid from the State budget;
- (ii) the part of the housing mortgage is subsidized from the State budget;
- (iii) social housing development is financed from the State budget target allocations and Municipalities budgets<sup>82</sup>, by building new or renovating and adapting existing buildings for housing purposes, as well as purchasing or otherwise acquiring lawful residential houses, part of the flats<sup>83</sup>.

- Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?

In Lithuania there are subsidies for following forms of tenures:

<sup>80</sup>*Ibid* 39.

<sup>81</sup>The Resolution No. 1162 of the Government of the Republic of Lithuania on the approval of the Description of the procedure of the provision of State supported housing credits (23 October 1997). Official Journal, 1997, No. 97-2458.

<sup>82</sup>About the social housing development please see the data base of the Lithuanian Parliament (in Lithuanian): <[http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=415165](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=415165)> (last visited 26 Nov. 2012).

<sup>83</sup>About the the loan guaranteed by the State please see the data base of the Lithuanian Parliament (in Lithuanian):<[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=422214](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=422214)> (last visited 26 Nov. 2012).

- (i) Subsidies for tenants<sup>84</sup> – low-income persons (families) may apply to the municipal social housing rent. The Municipalities for these persons (families), who meet the requirements, settled in the Law, grant of rent social housing for specialty rental price set by the Government. This subsidy is not of the pecuniary nature<sup>85</sup>.
- (ii) Subsidies for owners<sup>86</sup> – for people, who met the requirements, settled in the Law, grant a few types of loan are guaranteed by the State: the loan to buy or built the dwelling if the property of the dwelling will be transferred to the borrower in 2012; the loan for house construction; the loan for dwelling reconstruction; the loan for dwelling adaptation for needs of the disabled. This subsidy is of the pecuniary nature<sup>87</sup>.
- (iii) Subsidies for landlords<sup>88</sup> – there are only subsidies for landlords, who are engaged in agriculture. For example, there is a subsidy for replanting the forest in his land<sup>89</sup>.
  - Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?

As it was mentioned before, the various political parties are questioning the amount of State support for housing at issue whether the amount is reasonable and fair. There were no concrete legal challenges to certain subsidies.

- Summarise these findings in tables as follows:

Summary table 5

<b>Subsidization of landlord</b>	Tenure type Ownership of land
Subsidy before start of contract (e.g. savings scheme)	Name of subsidy Aim of subsidy  How it was mentioned above, there are only subsidies for landlords, who are engaged in agriculture, and there are no subsidies for the landlords who just own their land.

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<sup>84</sup>*Ibid* 84.

<sup>85</sup>*Ibid* 84.

<sup>86</sup>*Ibid* 84.

<sup>87</sup>*Ibid* 84.

<sup>88</sup>*Ibid* 84.

<sup>89</sup>*Ibid* 84.



Subsidy at start of contract (e.g. grant)	–
Subsidy during tenancy	–

Summary table 6

<b>Subsidization of tenant</b>	Tenure type Rent of housing
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling )	<p>Name of subsidy</p> <p>The municipal social housing rent for low-income persons (families). This subsidy is not of the pecuniary nature</p> <p>Aim of subsidy</p> <p>The socialization of these persons and their financial condition improving.</p> <p>There is no voucher allocated before they find a rental dwelling. Families and persons who are entitled to the municipal social housing upon their written request are recorded in the Municipality list for social housing. The priority for renting dwellings is given to the lists of former orphans and children without parental care and all other persons to the list of families with three or more children (adopted children), people with disabilities and families with disabled people and young families.</p> <p>It may be mentioned that the person at the end of his guardianship (care) for the majority, emancipation or marriage, according the national laws, can receive “the lump sum settlement”. But this subsidy can be used not only for housing rent or acquisition, but for other purposes – for studies, for health care and so on, i. e. this is not purposive subsidy for housing.</p>

Subsidy at start of contract (e.g. subsidy to move)	There is no subsidy to move.  The Municipality, the owner of social dwelling, and the person conclude the lease contract according the rules of the CC <sup>90</sup> .
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	The lease contract of the social housing is valid for an indefinite period. But there are some cases, when such contract must be terminated. First of all, social housing tenant is required every three years, under the Law on Resident's property/assets declaration <sup>91</sup> , to submit declaration of assets and income received for the last 12 months. If the social housing tenant's (or his family member's) assets or income received in exceed the maximum levels set by the Government, the lease is terminated.  Secondly, the lease is terminated, when the tenant or his family member acquires the ownership housing.

Summary table 7

<b>Subsidization of owner-occupier</b>	Tenure type 1 Ownership of housing
Subsidy before start of contract (e.g. savings scheme)	There is no such subsidy before the contract. In Lithuania subsidies can be received only after the conclusion of contracts. <b>(i) Name of subsidy</b> The loan for house construction <b>Aim of subsidy</b> The effective and targeted financial support for housing for low-income people and families. The loan agreement with the borrower is concluded in according to the procedures set by the banks. Loans are provided to persons (families) who are entitled to State support for housing under the Law on the Lithuanian state support

<sup>90</sup>*Ibid* 9.<sup>91</sup>The Law on Resident's property/assets declaration of the Republic of Lithuania (amended and supplemented). Official Journal, 1996, No. 50-1197.

	<p>for housing purchase or lease and apartment buildings renovation (modernization)<sup>92</sup>.</p> <p>This subsidy is granted when person provides for the bank the construction project or other project documentation (according to compliance with construction requirements), as well as the Centre of Registers statement about the borrower's rights to land.</p> <p>The whole amount of the subsidy shall be paid and funds are transferred to the bank account specified.</p> <p><b>(ii) Name of subsidy</b></p> <p>The loan for dwelling reconstruction</p> <p><b>Aim of subsidy</b></p> <p>The effective and targeted financial support for dwelling reconstruction.</p> <p>The loan agreement with the borrower is concluded in according to the procedures set by the bank.</p> <p>Loans are provided to persons (families) who are entitled to State support for housing under the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>93</sup>.</p> <p>This subsidy is available when person has the Centre's of Registers statement of housing depreciation and renovation project.</p> <p>The whole amount of the subsidy shall be paid and funds are transferred to the bank account specified.</p> <p><b>(iii) Name of subsidy</b></p> <p>The loan for dwelling adaptation for needs of the disabled</p> <p><b>Aim of subsidy</b></p> <p>The effective and targeted financial support for dwelling adaptation for needs of the disabled.</p> <p>The loan agreement with the borrower is concluded in according to the procedures set by the bank.</p> <p>Loans are provided to persons (families) who are entitled to State support for housing under the Law on the Lithuanian state support</p>
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<sup>92</sup>*Ibid* 39.

<sup>93</sup>*Ibid*.

	<p>for housing purchase or lease and apartment buildings renovation (modernization)<sup>94</sup>.</p> <p>This subsidy is granted when person has the project of housing reconstruction for the needs of the disabled.</p> <p>The whole amount of the subsidy shall be paid and funds are transferred to the bank account specified.</p> <p><b>(iv) Name of subsidy</b></p> <p>Insurance of residential property credit</p> <p><b>Aim of subsidy</b></p> <p>The effective and targeted financial support for housing for low-income people and families.</p> <p>Mortgage loans that under the borrower's request are granted by paying less than the prescribed by bank, but not less than 5 percent down payment must be insured by UAB "Būsto paskolų draudimas". For those debtors who are entitled to State support shall be paid all of the mortgage loan insurance premium or part thereof.</p> <p>People (family) who want to get a home loan and are entitled to public assistance funding program funds by paying the entire premium or part thereof, submit for a UAB "Būsto paskolų draudimas" (closed joint-stock company "Mortgage Loan Insurance") its established form of mortgage loan insurance application completed by the bank. The bank acts as an agent that mortgage loan would be insured, and submits for UAB "Būsto paskolų draudimas" relevant documents.</p> <p>The decision on the mortgage loan insurance is accepted by UAB "Būsto paskolų draudimas".</p>
Subsidy at start of contract (e.g. grant)	<p><b>The amount of State support for housing procurement:</b></p> <p>(i) interest of 3-6% reimbursed for housing mortgage granted before or on 31 December 2002;</p> <ul style="list-style-type: none"> <li>from 1 January 2003 to 1 May 2006, an income tax exemption is applicable: a possibility to recover up to 33% of interest paid for a housing mortgage;</li> <li>from 1 May 2006 to 1 January 2008, an income tax exemption is applicable: a possibility to recover up to 27% of interest paid for a housing mortgage;</li> </ul>

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<sup>94</sup>*Ibid.*

	<ul style="list-style-type: none"> <li>• from 1 January 2008, an income tax exemption is applicable: a possibility to recover up to 24% of interest paid for a housing mortgage;</li> </ul> <p>(ii) housing mortgage subsidies (10 or 20% of a housing mortgage).</p> <p><b>The amount of State support for housing reconstruction:</b></p> <p>(i) The state covers up to 50% of the investment amount subject to the energy efficiency of the investment project;</p> <p>(ii) The state reimburses the expenditures for low-income families and single-member households:</p> <ul style="list-style-type: none"> <li>• the initial deposit, but not more than 10% of the investment amount;</li> <li>• credit insurance fee;</li> <li>• part of the credit and its interest.</li> </ul> <p><b>The amount of State support for insurance of residential property credit:</b></p> <p>Insurance fee calculated from the insurance amount. Insurance fee rates depend only on the amount of initial contribution.</p> <p>Insurance fee is paid in Lithuanian litas.</p>
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### 3.7. Taxation

- What taxes apply to the various types of tenure (ranging from ownership to rentals)?

In Lithuania the following taxes relate to the various tenures<sup>95</sup>:

1. The land tax (established in the Law on the Land Tax<sup>96</sup>) – taxpayers are private landowners. Land tax per year is 1.5 percent of the land price<sup>97</sup>.
2. The real estate tax (established in the Law on the Real Property Tax<sup>98</sup>) – real estate tax payers are Lithuanian and foreign natural and legal persons. The tax object is real estate in Lithuania. The tax rate is from 0.3 percent to 3 percent per

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<sup>95</sup>Homepage of the State Tax Inspectorate. Available at: <<http://www.vmi.lt/en/?itemId=10127285>> (last visited 29 Nov. 2012).

<sup>96</sup> The Law on the Land Tax of the Republic of Lithuania (amended and supplemented). Government Journal, 1992, No. 21-612.

<sup>97</sup>*Ibid* 96.

<sup>98</sup> The Law on the Real Property Tax of the Republic of Lithuania (amended and supplemented). Official Journal, 2005, No. 76-2741.

year of real estate value. The concrete rates are established by Municipalities according criteria set out in the Law on the Real Property Tax<sup>99</sup>.

3. The inheritance tax (established in the Law on the Inheritance Tax<sup>100</sup>) – taxpayers are residents and non-residents of Lithuania. The tax object is patrimony. The tax fee is calculated as a percentage of the taxable value of the tax object to the following rates: if the tax object does not exceed 0.5 million Lt – 5 percent; if the taxable value of the object exceeds 0.5 million Lt – 10 percent<sup>101</sup>.
4. The profit tax (established in the Law on the Profit Tax<sup>102</sup>) – taxpayers are Lithuanian and foreign legal persons. The tax object is income earned in Lithuania and abroad. The general tax rate is 15 percent from tax object value and the specific tax rate of 5 percent is established when the legal person's average listed number of employees does not exceed 10 people and tax deferred income does not exceed 500 thousand Lithuanian litas. This tax is relevant for owners who sell their housing and for persons acting in housing selling and/or rent services market<sup>103</sup>.
5. The personal income tax (established in the Law on the Personal Income Tax<sup>104</sup>) – taxpayers are habitants (natural persons) who have received income. The tax object is all income received, including the income from the lease of real estate. The general tax rate is 15 percent.
6. The value added tax (established in the Law on the Value added Tax<sup>105</sup>) – taxpayers are Lithuanian and foreign legal or natural person engaged in any kind of economic activity. The tax object is supply of goods and services, which satisfies all the conditions of the Law on the Value added Tax. The general tax rate is 21 percent from tax object value and preferential rates of 9 and 5 percent. This tax is relevant for persons acting in housing selling and/or rent services market.

- In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?

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<sup>99</sup> *Ibid* 96.

<sup>100</sup> The Law on the Inheritance Tax of the Republic of Lithuania (amended and supplemented). Official Journal, 2002, No. 123-5531.

<sup>101</sup> *Ibid* 96.

<sup>102</sup> The Law on the Profit Tax of the Republic of Lithuania (amended and supplemented). Official Journal, 2001, No. 110-3992.

<sup>103</sup> *Ibid* 96.

<sup>104</sup> The Law on the Personal Income Tax of the Republic of Lithuania (amended and supplemented). Official Journal, 2002, No. 73-3085.

<sup>105</sup> The Law on the Value added Tax of the Republic of Lithuania (amended and supplemented). Official Journal, 2002, No. 35-1271.

Under the CC of Lithuania (Article 6.584)<sup>106</sup> tenants pay payments for cold and hot water, electricity, gas, thermal energy and utilities (trash removal, elevators, common areas and exterior cleaning and other).

- Is there any subsidization via the tax system? If so, how is it organised? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)

Yes, there are different subsidies for different taxes:

- 1) subsidy for the tax of land – from the land tax are exempt these land owners, who are set by 0-40 percent working capacity; the people who have reached the retirement age persons and minor children when in the families of such owners there are no employable persons and their owned plot of land is not the exempt amounts established by Municipalities; landowners whose payable land tax (for all owned land) does not exceed five Lithuanian litas;

The land tax is not applied to public roads, forest land, plots of land owned by the foreign diplomatic missions and consular posts parity basis, national parks, regional parks, natural monuments of land, with the exception of buildings, courtyards and several occupied land, archaeology and historical monuments;

- 2) sexemption for real estate tax

(i) from the real estate tax are exempt the real estate which is used in agricultural activities, educational work, social care and social care used as a creative workshop (studio) for individual creative activity, for the manufacture of funeral services, including real estate, located in the cemetery area. Real estate tax also exempts individuals owned or acquired residence, gardens, garages, farms, greenhouses, farm, home economics, science, religious, recreational use buildings (premises), fisheries buildings and civil engineering works buildings, with a total value does not exceed 1 million;

(ii) from the real estate tax are exempt foreign diplomatic missions and consular posts, international intergovernmental organizations or agencies real estate, State or municipal property, free economic zone enterprises, bankrupt companies real estate, traditional religious communities, associations and centres real estate.

- 3) subsidy for value added tax – (i) preferential rate of 9 percent is applicable for books and non-periodical publications and for (until 31 December, 2012) thermal energy supplied for residential space heating; (ii) preferential rate of 5 percent is applicable for (until 31 December, 2012) medicines and medical aids when its acquisition is wholly or partly offset by the State; (iii) the tax is not applied for the goods and services set in the Law on the Value added Tax. There are no subsidies for economic

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<sup>106</sup> *Ibid* 9.

activity of housing rental services; maybe it is not useful to explain the content of the tax because it does not apply to rental relations?

- 4) subsidy for personal income tax – non-taxable income part applies only to employment-related income according to the Law on the Personal Income Tax; - what about the income from rental contracts?
- 5) under the Law on the monetary social assistance for deprived residents<sup>107</sup> for residents who met conditions of the law are granted the compensation for heating costs, the cost of drinking water and hot water<sup>108</sup>.

- In what way do tax subsidies influence the rental markets?

Tax subsidies influence the rental markets in several positive ways, for instance low-income people who rent housing are granted some compensation for heating costs, the cost of drinking water and hot water (see above).

On the other hand, in examining tax subsidies from lessors position, should be noted, that tax subsidies for lessors practically are not relevant and does not have positive impact for them. On the contrary, lessors do not declare their activity of housing renting because of high taxes. The only exception would be in the terms of a smaller amount of real estate tax in certain Municipalities: this reduced fee encourages people to invest in housing specifically in these Municipalities and here the rental market's scope may increase<sup>109</sup>.

- Is tax evasion a problem? If yes, does it affect the rental markets in any way?

Yes, it is. The majority of housing lessors provide housing rent services without a business license because thus avoids them from taxes paying. This phenomenon makes rental markets non-transparent and there are no precise data about supply and demand in these markets. These markets are often called as very good environment for tax law offenses<sup>110</sup>.

## Summary table 8

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<sup>107</sup>The Law on the monetary social assistance for deprived residents of the Republic of Lithuania (amended and supplemented). Official Journal, 2003, No. 73-3352.

<sup>108</sup>*Ibid* 109.

<sup>109</sup>About the causes to rent the dwelling without the conclusion of the rent contract please see (in Lithuanian): <<http://www.bustokaina.lt/2011-07-15-nuomotis-busta-be-sutarties-pigiau.html>> (last visited 1 Dec. 2012).

<sup>110</sup> About the causes to rent the dwelling without the conclusion of the rent contract please see (in Lithuanian): <[http://www.respublika.lt/lt/naujienos/lietuva/verslas/nuo\\_mokesciu\\_begancius\\_nuomotojus\\_saugo\\_patikimas\\_stogas/print.1](http://www.respublika.lt/lt/naujienos/lietuva/verslas/nuo_mokesciu_begancius_nuomotojus_saugo_patikimas_stogas/print.1)> (last visited 1 Dec. 2012).



	Homeowner		Social landlord		Private landlord	
	Name of taxation	Does it contain an element of subsidy, if any? If so, what?	Name of taxation	Does it contain an element of subsidy, if any? If so, what?	Name of taxation	Does it contain an element of subsidy, if any? If so, what?
<b>Taxation at point of acquisition</b>						
The real estate tax	The real estate tax	From the real estate tax are exempt the real estate which is appointed for specific activities, for example for agricultural activities, education	No taxes NB: in the case of social housing rent the home-owner and landlord is the Municipality.	- _____	The land tax	From the land tax are exempt these land owners – the people who are set by 0-40 per cent working capacity; the people who have reached the retirement age persons and minor children when in the families of such owners there are no employable persons and their owned plot of land is not the exempt amounts

						establishe d by Municipalit ies; landowner s whose payable land tax (for all owned land) does not exceed five Lithuanian litas.
The land tax	The land tax					
<b>Taxation during tenancy</b>						
The real estate tax	The profit tax	The tax is not applied (i) for free economic zone enterprise s the tax rate is reduced by 50 per cent; (ii) for enterprise s where work limited working capacity people and revenue for the same output is more than 50 per cent of all	No taxes NB: in the case of social housing rent the home- owner and landlord is the Municipalit y.	_____	The tax land	Yes, please see above

		income.				
The profit tax (for profit of housing rental services for legal persons)	The value added tax	No				
The value added tax (for economic activity of housing rental services)	The personal income tax	No				
The personal income tax (for natural persons)						
The land tax						
<b>Taxation at the end of tenancy</b>						
The real estate tax	The profit tax	Yes. Please see above	No taxes, please see above	_____	The tax land	Yes, please see above
The profit tax (for profit of housing rental services)	The personal income tax	No				
The value added tax (for economic activity of housing rental services)	The value added tax	No				
The						

personal income tax (for natural persons)						
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#### 4. Regulatory types of rental and intermediate tenures<sup>111</sup>

##### 4.1. Classifications of different types of regulatory tenures

- Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?

First of all it should be noted that in Lithuania we could distinguish two main regulatory types of tenure:

- commercial housing rent and
- social housing rent.

The first type of tenure is the subject of regulation mentioned in the CC<sup>112</sup>. There are no special requirements for lessors and tenants as parties to the rental contract, but there are special rules to protect the tenants. General rule is that the parties to the tenure contract are free to agree upon contract terms, which do not contradict, with laws.

This type of tenure occupies 9 percent of the dwelling stock market. It should be noted that this data could be inexact because lessors seek to avoid taxes and they hide their housing rental activities.

The second type of tenure has the public interest element. It has special purposes – to provide State aid to supply residential accommodation for low – income people (families). This type of housing rent is regulated by the CC<sup>113</sup> (there are established requirements for the lease contracts) and the special law – the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>114</sup> (there are established special requirements for the tenants). Therein tenants must meet the requirements (the requirements of special income levels) set in the special law and lessors are only Municipalities. In this case the tenant has more guarantees, more security than in the case of commercial housing rent and is treated as a weaker party. This type of lease is strictly controlled by the State and Municipalities.

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<sup>111</sup> I.e. all types of tenure apart from full and unconditional ownership.

<sup>112</sup> *Ibid* 9.

<sup>113</sup> *Ibid* 9.

<sup>114</sup> *Ibid* 39.

This type of tenure occupies 3 percent of the dwelling stock market. This number should increase because the number of people (families) who need social housing is increasing and one of the State's housing policy aims is to increase the amount of social housing.

#### **4.2. Regulatory types of tenures without a public task**

- Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.<sup>115</sup>

In the Lithuanian commercial-professional rental housing market these subjects play the most important role:

- natural persons who provide rental housing services:

According to the rules of the issue of business license for habitants, approved by the Resolution No. 1797 of the Government of Lithuania from 19 November, 2002<sup>116</sup> and the Law on the Personal Income Tax of Lithuania natural persons who want to act in the housing rental market must obtain a business license and register as the individual activity's executor. The business licenses are issued by the State Tax Inspectorate;

- legal persons who provide rental housing services:

Under the data provided by the Statistics Lithuania there were 2268 enterprises renting or operating their own or leased real estate in 2011. Their legal forms generally are individual enterprises or stock corporations.

It should be noted that, as it was mentioned above, in Lithuania it is a widespread phenomenon of illegal commercial rent of housing: natural persons or even legal persons exercise rental housing activities without necessary documents thus avoiding payment of taxes.

In Lithuania the commercial-professional rental housing activity is also called "active rent", i. e. such housing rent activity, when a person purchases housing in order to rent it in the future and in order to obtain the maximum revenue earning from the housing rent, and in the period of lease he acts in overseeing housing, in satisfying the wishes of the tenant, also makes changes, improvements of housing, and so on. This "active rent" activity is the subject matter of the national tax law regulations.

- Different types of private regulatory rental types and equivalents:
  - Rental contracts

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<sup>115</sup> Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.

<sup>116</sup> The Resolution No. 1797 of the Government of the Republic of Lithuania on the issuance of business licenses (19 November 2002). Official Journal, 2002, Nr. 112-4992.

- Are there different intertemporal schemes of rent regulations?

Under the CCof Lithuania (Article 6.582)<sup>117</sup> a contract of lease of a dwelling may be formed for an indeterminate term or for a fixed term. The fixed-term contract must be concluded in written form. The written lease contract is concluded, when the parties sign it, and verbal – from the parties' agreement on the terms of the contract or the permit to settle down in the dwelling.

- Are there regulatory differences between professional/commercial and private landlords?

It should be noted that in Lithuania, both, legal and natural persons, who are acting in rental housing market and who are seeking to obtain the profit from the housing lease, have to pay taxes to the State for their rental activity income. The main difference between commercial lessor – legal person – and commercial lessor – natural/private person – is the form of their activity: the natural person must have a business license and the legal person does not have the duty of obtaining such license – the rental housing activity must be provided in his establishment documents<sup>118</sup>.

If a natural/private person rents the dwelling in Lithuania, which was acquired for him or his family needs and which temporarily becomes unnecessary in the everyday life, the rental housing activity is called “passive rent”. The income from such activity is not considered as the personal income and it is not the object of the Law on the Personal Income Tax of Lithuania. So if a natural/private person receives or is planning to get rental housing income not from personal activity tied with the pursuit of profit, his rental activity is not the object for registration as an individual activity's executors and he does not have an obligation to obtain a business license<sup>119</sup>. Such activity is not controlled in practice because this is not considered as business activity.

- Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)

Private landlords, who are acting in “passive rent” market, generally rent their own dwellings. This situation is caused by the circumstances that these dwellings are temporarily unnecessary in their everyday life and these dwellings can be used for rent.

Professional/commercial landlords (natural and legal persons), who are acting in the “active rent” market, usually rent their own dwellings or dwellings with mortgage-based loan. It should be noted that natural persons, who are acting as professional/commercial

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<sup>117</sup>*Ibid* 9.

<sup>118</sup>About the regulatory differences between professional/commercial and private landlords please see (in Lithuanian): <<http://www.balsas.lt/naujiena/628436/buto-nuoma-sudaryti-sutarti-ar-ne/2>> (last visited 1 Dec. 2012).

<sup>119</sup>*Ibid* 121.

landlords, choose however the rent of their own dwellings and avoid the mortgage based loan, because such financial commitment for business development for natural persons is not attractive. Legal persons also prefer to rent their own dwellings, but the legal persons do not avoid the mortgage-based loan in such extent as natural persons do. Usually this is because the fact that legal persons have a lot of rental dwellings, they receive more income than natural persons and the loan payment is not frightening. The mortgage based loan is often seen as the mean for business development.

- Apartments made available by employer at special conditions

Apartments made available by employer at special conditions are called “official accommodation”. Under the CC (Articles 6.618 – 6.622) the employer gives the official accommodation to the employees (civil servants), regarding to the nature of their work (civil service) and statutory conditions, for such a period as long as there are no changes in their work (civil service) nature or until work (civil service) relationship with the employer are interrupted, or until the statutory conditions exist.

The decision to grant an official accommodation is admitted by the public authority or a person authorized by the Municipality’s executive body or by the legal entity’s governing body. Based on this decision, the dwelling rent contract is concluded. This contract must comply with the **CC** if the special laws does not provide otherwise.

The usage order of the official accommodation and its accounting order are established by the Government of Lithuania or its authorized institution.

At the end of the employment (civil service) contract, the employee to whom the official accommodation was granted must move out of official accommodation with his family members. For evicted employees (civil servants) the other dwelling is granted if:

- there are circumstances established in the Article 6.616 of the CC;
- employee (civil servant) must leave his work (civil services) because he became I Group or Group II disabled due to the work (civil services) reasons;

For family members of the evicted employee the other dwelling is granted if the employee (civil servant) is killed or missing because the work (civil services) reasons.

It could be mentioned that the Articles 6.623 – 6.625 of the CC also establishe the lease of dwellings in hostels. The workers, employees, students and high school pupils may take occupancy of a hostel dwelling during their time of work or study. Hostels are dwelling houses built and equipped especially for these purposes. The procedure or granting a hostel dwelling and the use thereof shall be determined within collective agreements of legal persons. In those organisations where such agreement is not concluded, this procedure shall be established upon the agreement between the administration and the employees, and in the institutions off science and learning, upon the decision of the managing bodies thereof. Upon the expiration of the labour agreement or the period of study, the employees shall be evicted from the hostel, except in specia cases provided for by Article 6.621 of the CC. The persons who study shall be evicted at the end of the academic year. Hostel dwellers may be evicted without other dwelling being granted in the instances where they create by their improper behaviour such conditions, which render it impossible for others to maintain occupancy together or

in the neighbourhood, likewise in the instances where they continuously damage the dwelling or use it not according to its designation. Rules on rental contracts do not apply to hotels and hostels?

- Mix of private and commercial renting (e.g. the flat above the shop)

In Lithuania the mix of private and commercial renting exists: flats are located in the same building with shops, restaurants, sport clubs, night clubs, beauty salons, solariums studios, dental cabinets and offices. As for such mixed lease there should be noted a few aspects.

First of all, the building, where services of mixed renting are provided, like all others buildings in Lithuania, should correspond to Hygiene Standards, approved by the orders of the Minister of Health of Lithuania, and to Construction Technical Regulations, approved by the orders of the Minister of Environment of Lithuania. The problem is that there are different Hygiene Standards and different Construction Technical Regulations for dwelling buildings and for special purpose buildings. For special purpose buildings there are a lot of specific requirements. So it is difficult to provide mixed renting because one building must satisfy dual requirements: one part of building must satisfy requirements for dwelling buildings and the other part – for special purpose buildings. Moreover, there are cases where these two types of requirements are contrary to each other and the mixed renting activity cannot be operated. For example, in the dwelling buildings the level of noise is limited from 22 h pm until 6 h am, so the mixed rent of one building for dwellings and for night club or the restaurant activities probably will be impossible; in the dental cabinets there are radiation emitting devices and its use could be inconsistent with the dwellings in the same building.

Secondly, the mixed rent in Lithuania has dual effect for tenants. On one hand it could attract potential tenants (for example, the neighborhood of residents and the food shop is attractive for the both sides) but it also could repel potential tenants (for example, the majority of residents do not want to live in the neighborhood with the night club)<sup>120</sup>.

- Cooperatives

The cooperatives in Lithuania now are called “Partnership for construction of residential buildings”. Its activity is regulated by the Resolution No. 280 of the Government of Lithuania, 23 April 1993. This partnership has been set up to supply their member’s residential houses or apartments. The partnership can be registered only when the construction is to solve the funding issues. Partnership may be founded by municipalities, companies, institutions, organizations and individuals.

In Lithuania at the beginning of 2012 were registered 408 partnerships for construction of residential buildings. Do these partnerships act as legal persons? How long these partnerships exist – till the end of construction of the house?

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<sup>120</sup>About the mixt rent effects in Lithuania please see (in Lithuanian): <<http://www.15min.lt/naujiena/aktualu/lietuva/su-kliutimis-kuriant-kavine-susidurusi-gintare-gureviciute-senamiescio-gyventojai-mano-esantys-privilegiuoti-56-188892>> (last visited 1 Dec. 2012).



- Company law schemes

In Lithuania multi-family residential houses and other buildings holders can hire companies that provide home management and maintenance services. But it is possible such situation when multi-family residential houses and other buildings holders set up a company that will not only manage their home, but also provides for pecuniary housing management, maintenance services to other people. In this case, the house owners own shares in a company, which provides housing management, maintenance services to other home owners. But the company is not an owner of the house?

- Real rights of habitation

There is the special law – the Law on the Partnership of the owners of blocks of flats and on Partnership of other purposes buildings owners. This law provides for multi-family residential houses and other buildings holders of common shared property management, the way the establishment of partnership is governed by the establishment, management, operation, reorganization and liquidation of the partnership of apartments and other premises (building) owners – the members' rights and responsibilities.

The partnership of the owners of blocks of flats is a private, non-profit legal entity. Partnership is established in order to create more opportunities to take the total building engineering equipment repair and reconstruction work, the plot assigned to the building management and other work to improve the common areas. It allowed to partnership to legitimize the use of common facilities and lease them.

Only 17 percent of apartment buildings are owned and maintained by the homeowners who establish homeowner's partnerships.

The establishment of partnership often lacks initiative of local government institutions, information and organizational-technical state aid. Partnerships usually are unable to provide adequate apartment property maintenance, which forces partnerships to hire special service companies. However, there is a lack of companies who can provide good quality services. In 2000, after the amendments of legal acts, local governments began to accumulate special homeowner's funds. These funds are used to promote the establishment of homeowner's partnerships, to rehabilitate houses, and implement energy-saving measures.

In Lithuania at the beginning of 2012 was registered 35 partnerships of the owners of blocks of flats.

- Any other relevant type of tenure

There are no other relevant type of tenure.

#### **4.3. Regulatory types of tenures with a public task**

- Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as

Rental tenures with a public task are called social housing (non commercial, municipality owns living premises that are rented based on the governmental order of determining the rent fee)<sup>121</sup>. They are allocated to a low income persons and families. In Lithuania there is no other form of support (like rental housing in private housing market for people with low income). The social housing in Lithuania is considered as the part of the social support and the social integration, which is provided by the Municipalities, so Municipal tenancies are equivalent to social tenancies, i.e. they are the synonyms in the Lithuanian rental regulation<sup>122</sup>.

- Municipal tenancies

Low-income persons (families) may apply to the Municipalities for social housing rent or the improvement of their housing conditions. Families and individuals in accordance with the provisions of the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>123</sup>, are entitled to the municipal social housing upon written request, which is registered in the Municipal executive authority by a person's (a family event – one of the spouses) declared place of residence or, if he does not have a residence – by the Municipality in which he lives. Together with the request it should be provided an additional documentation proving entitlement to social housing or improving of the housing conditions. The requests are registered in accordance with the procedures set by the Municipal executive authority.

- Housing association tenancies

In Lithuania there are no housing associations, i.e. there are no non-profit organizations, which provide housing for a small rental fee for people who need housing.

- Social tenancies

In Lithuania “social tenancies” is the synonym with “municipal tenancies”.

- Public renting through agencies

The public renting of social housing through the agencies is not practiced in Lithuania. Only Municipalities offer social housing (by building new or renovating and adapting existing buildings for housing purposes, etc.)<sup>124</sup>.

- Privatised or restituted housing with social restrictions

The general rule is that the privatization of municipal rental social housing is not allowed<sup>125</sup>. But in some cases, indicated in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization), it could

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<sup>121</sup> *Ibid* 39.

<sup>122</sup> *Ibid* 39.

<sup>123</sup> *Ibid*.

<sup>124</sup> *Ibid*.

<sup>125</sup> *Ibid*.

be allowed. Under the provisions of the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) there are established some advantages for the state or Municipalities owned housing privatization<sup>126</sup>. When there are statutory conditions, a person has these advantages: (i) the sale price of housing will not be greater than the price in cash, which would be calculated in accordance with the Law on Privatization of flats for 1 July 1998, and adjusted in line with inflation; (ii) If a person wishes for privatized housing he can pay by installments over 10 years.

- Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness

Such type of social housing in Lithuania does not exist.

- Etc.

There are no peculiarities of the regulatory types in the rental housing with a public task in Lithuania.

It could only be mentioned that in the biggest cities of Lithuania (Vilnius, Kaunas, etc.) there are common lodging-houses (hostels for homelessness) – local social service institutions of Municipalities with a purpose to provide temporary shelter and integrate socially vulnerable people into the society. These hostels provide only temporary accommodation services, however it is not related with a social housing.

- Specify for tenures with a public task:
  - selection procedure and criteria of eligibility for tenants

**Criteria of eligibility for tenants** are set in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>127</sup>.

Tenant may be granted of:

- social housing;
- social housing improvement.

Families and individuals may be entitled to social housing, in particular, those:

(i) who under the Law on habitant's asset declaration of Lithuania for a period of one year (last 12 months) prior to the day of recording to the list of families or individuals and prior to the social housing granting applicants must have declared their assets and income which is less than the maximum income threshold, In addition the applicants assets are also assessed by the Government; and

(ii) who do not have their own housing in the Lithuanian territory or existing housing usable space per family member is less than 10 square meters or less than 14 square

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<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

meters, where in the family is the person to whom is established severe or moderate disability level under the Law on Social integration of disabled's<sup>128</sup> or the person who are declared unfit for work (having lost 75-100 percent of working capacity) or partially capable of work (having lost 60-70 percent of working capacity), or who have reached retirement age and who has the need for special needs, or a person suffering from severe form of chronic diseases listed in the list approved by the Government or its authorized institution.

Family or a person living in a rented social housing has the right to social housing condition's improvement:

- (i) if the social housing usable space per family member is less than 10 square meters, or is less than 14 square meters in the cases mentioned above; and
- (ii) if assets and income declared under the Law on habitant's asset declaration of Lithuania for a period of one year (last 12 months) prior to the day of the social housing improvement are less than the maximum income and assets determined by the Government of Lithuania.

Selection procedure of tenants is set in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>129</sup> and in the Municipalities executive authorities acts.

Families and individuals<sup>130</sup> are entitled to the municipal social housing upon written request, which is registered in the Municipal executive authority by a person's (a family event – one of the spouses) declared place of residence or, if he does not have a residence – by the Municipality in which he lives. Together with the request it should be provided additional documentation proving entitlement to social housing or improving of the housing conditions. The requests are registered accordance with the procedures set by the Municipal executive authority<sup>131</sup>.

The lists of families and individuals, who are entitled to social housing, are formed by the Municipality's executive body according to the date of the request registration's date. There are formed following separate lists:

1. young families;
2. families with three or more children (adopted children);
3. the former orphans and former children without parental care. To this list were added orphaned and deprived of parental care individuals or their families, who at the end of their custody or imprisonment are not more than 35 years;
4. persons with disabilities and families with disabled persons (the person has severe or moderate disability level under the Law on Social integration of disabled's or

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<sup>128</sup> The Law on Social integration of disabled's of the Republic of Lithuania (amended and supplemented). Government Journal, 1991, No. 36-969.

<sup>129</sup> *Ibid* 39.

<sup>130</sup> *Ibid*.

<sup>131</sup> Please read more in part 4.3 Regulatory types of tenures with a public task.

the person is declared unfit for work (having lost 75-100 percent of working capacity) or partially capable of work (having lost 60-70 percent of working capacity), or he have reached retirement age and he has the need for special needs, or a person is suffering from severe form of chronic diseases listed in the list approved by the Government or its authorized institution);

5. general list. The list shall include all families and persons not included in the 1, 2, 3 and 4 of the lists;

6. social housing tenants who have a right to improve their housing conditions.

Municipal housing could be rent for families and people who are not listed in the lists mentioned above according the procedure set by the Municipality's Council:

- for the families and individuals who have lost their home due to fire, floods, strong winds, or other circumstances beyond the control of the human will, and who in Lithuania has no ownership of decent housing;
- for the families with five or more children
- for the families in which in one time are born three or more children;
- for the single persons with reduced mobility.

The Municipality's Council publishes the information about rented social housing +in the Municipality's website.

The municipal housing is renting in accordance with the order of priority of the lists (from the list 1 to the list 6). If the family and the person, included in the list of municipal social housing rent, acquire the right to be included in the next list, upon the family or the person's request, they can be can be rewritten to the corresponding list, embracing all the years in the former list. The priorities of the lists are established by the Municipality's Council, giving priority to the former orphans and former children without parental lists. The decision to rent social housing is made by the Municipality's executive authority. Contracts with social housing tenants are concluded according to the CC<sup>132</sup>. Parties of the contract may include conditions on the tenant's relocation to housing with smaller area. When the family and the person acquire ownership of housing, social housing contract is terminated in accordance with the contract conditions.

For example, at this time in the department of social housing of the Municipality of Vilnius city there are approved by the order of the Director of the Vilnius city's administration six lists of social housing for rent according the percentage of housing units allocated to each of the lists established by the Municipality's Council and set on 17 March, 2010:

1. for young families – 20% (First list);
2. for families with three or more children (adopted children) – 10% (Second list);

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<sup>132</sup>*Ibid* 9.

3. for the former orphans and former children without parental care – 25% (Third list);
4. for disabled persons (families) – 20% (Fourth list);
5. for persons (families) included in the general list – 20% (Fifth list);
6. for social housing tenants having a right to improve their housing condition – 5% (Sixth list).

Social rented housing fund's allocation by the lists by percentage may vary, depending on family composition and the structure of available housing.

Currently, in 2012, 6283 persons are waiting for a social housing.

Currently in the First list 1817 people are recorded for social housing; in the Second list – 269 people; in the Third list – 755 people; in the Fourth list – 967 people; in the Fifth list – 2462 people; in the Sixth list – 19 people<sup>133</sup>.

- typical contractual arrangements, and regulatory interventions into, rental contracts

There are contractual arrangements, and regulatory interventions into rental contracts under the CC<sup>134</sup> and under the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>135</sup>:

- if the social housing contract is interrupted because the family or individual breached its conditions, the family or individual have right to conclude the new one social housing contract only after 5 year from the contract interruption's day;
- parties of the contract may include conditions on the tenant's relocation to housing with smaller area. When the family and the person acquire ownership of housing, social housing contract is terminated in accordance with the contract conditions;
- social housing tenant is required every three years, under the Law on Resident's property/assets declaration, to submit declaration of assets and income received for the last 12 months. If the social housing tenant's (or his family member's) assets or income received in exceed the maximum levels set by the Government, the lease is terminated. Data on declared assets and income received during the month from the date specified in this paragraph must be provided to the Municipality's executive authority;

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<sup>133</sup>Homepage of the Vilnius city Municipality. Available at (in Lithuanian): <http://www.vilnius.lt/index.php?3559442782> (last visited 10 Dec. 2012).

<sup>134</sup>*Ibid* 9.

<sup>135</sup>*Ibid* 39.

- the lease is not terminated if the social housing tenant's (or his family member's) assets or income received for the last 12 months exceed no more than 5 percent of levels set by the Government and if the tenant (or his family member) at the time of the data providing for Municipality's executive authority is registered in the local labor office as unemployed or the tenant (or his family member) is recognized unfit for work un the Law on Social integration of disabled's;
  - the fee for cold and hot water, electricity, gas, thermal energy and utilities (trash removal, elevators, common areas and exterior cleaning, etc.) is taken separately from the social housing rent;
  - for temporarily departure of the tenant, family member or a former member of the family, the right of social housing is left for six months on condition that they will pay the rent and charges for utility services. In cases, indicated in CC<sup>136</sup>, the right of social housing could be left for all period of departure.
- opportunities of subsidization (if clarification is needed based on the text before)

The oppotunities of the subsidization of social housing (conditions of receiving social housing, requirements for the potential tenants, and so on) are described above.

- from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?

The procedure for obtaining "housing with a public task" and the actions of the potential tenant are already exhaustively described above in answering the question "selection procedure and criteria of eligibility for tenants". The potential tenant who would like to be entered in the appropriate list of social housing tenants and to obtain social housing must submit for his residence Municipality documents which prove: that he does not own housing, relevant documents regarding his annual income and his disability or illness, marital status and quantity of children. It should be noted that detailed information about receiving of the social housing is provided in the Municipalities and in the Ministry of Social Security and Labour of Lithuania (the information is provided by the phone or in the institutions).

Summary table 9

Rental housing <b>without a public task</b> (market rental housing for which the	Main characteristics
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<sup>136</sup> *Ibid.*

ability to pay determines whether the tenant will rent the dwelling); for example different intertemporal schemes of different landlord types with different tenancy rights and duties	<ul style="list-style-type: none"> <li>• Types of landlords</li> <li>• Public task</li> <li>• Estimated size of market share within rental market</li> <li>• Etc.</li> </ul>
<ol style="list-style-type: none"> <li>1) Private rental tenancy a</li> <li>2) Private rental tenancy b</li> <li>3) Private rental tenancy c</li> <li>4) Etc.</li> </ol>	
<ol style="list-style-type: none"> <li>1. commercial-professional housing rent provided by natural persons, who have their business licenses and who are the subjects of tax law</li> </ol>	<ul style="list-style-type: none"> <li>• Landlords are the natural persons who must obtain a business license for housing rent activity and register as the individual activity's executor. Here is a lot of illegal activity because the natural persons are acting without business licenses to prevent payment of taxes;</li> <li>• In Lithuania the commercial-professional rental housing activity is also called "active rent", i. e. such housing rent activity, when person purchases housing in order to rent it in the future and in order to obtain the maximum revenue earning from the housing rent, and in the period of lease he acts in overseeing housing, in satisfying the wishes of the tenant, also makes changes, improvements of housing, and so on. This "active rent" activity is the subject matter of the national tax law regulations;</li> <li>• In the activity of this housing rent type where is no element of public task;</li> <li>• In dwelling stock commercial housing rent occupies 9 percent in general. There are no data that part of the 9 percent is occupied by the natural persons providing commercial-professional housing rent activity;</li> </ul>



	<ul style="list-style-type: none"> <li>• This type of housing rent is the subject to regulation of the CC<sup>137</sup>. There are no special requirements for lessors and tenants;</li> <li>• In these cases lessor and tenant are considered as equivalent parties. They are free to provide lease terms which do not contradict with laws;</li> <li>• This type of leasing is difficult to carry out State surveillance as there are a lot of illegal activities in purpose to avoid taxes;</li> <li>• It should be noted that natural persons, acting like professional/commercial landlords, choose however the rent of their own dwellings and avoid the mortgage based loan, because such financial commitment for business development for natural persons is not attractive.</li> </ul>
2. commercial-professional housing rent provided by legal persons who are the subjects of tax law	<ul style="list-style-type: none"> <li>• Landlords are the legal persons. Their legal forms generally are individual enterprises or private companies. Under the data of Statistics Lithuania in 2011 there were 2268 enterprises renting and operating of own or leased real estate. Very often legal persons exercise rental housing activities without necessary documents and</li> </ul>

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<sup>137</sup> *Ibid.*

	<p>without declaration to authority about the execution of the housing rental activity thus avoiding payment of taxes;</p> <ul style="list-style-type: none"> <li>• In Lithuania the commercial-professional rental housing activity is also called “active rent”, i. e. such housing rent activity, when person purchases housing in order to rent it in the future and in order to obtain the maximum revenue earning from the housing rent, and in the period of lease he acts in overseeing housing, in satisfying the wishes of the tenant, also makes changes, improvements of housing, and so on. This “active rent” activity is the subject matter of the national tax law regulations;</li> <li>• In the activity of this housing rent type where is no element of public task;</li> <li>• In dwelling stock commercial housing rent occupies 9 percent in general. There are no data that part of the 9 percent is occupied by the legal persons providing commercial-professional housing rent activity;</li> <li>• This type of housing rent is the subject to regulation of the CC<sup>138</sup>. There are no special requirements for lessors and tenants;</li> <li>• In these cases lessor and tenant are considered like equivalent parties. They are free to provide lease terms which do not contradict with laws;</li> </ul>
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<sup>138</sup> *Ibid.*

	<ul style="list-style-type: none"> <li>• This type of leasing is difficult to carry out State surveillance as there are a lot of illegal activities in purpose to avoid taxes;</li> <li>• Legal persons like the natural persons also prefer to rent own dwellings, but the legal persons avoid the mortgage based loan not to that big extent as natural persons. Usually this is because the fact that legal persons have a lot of rental dwellings, they receive more income than natural persons and the loan payment is not frightening. By contraries the mortgage based loan often is seen as the mean for business development.</li> </ul>
3. commercial-non-professional rent	<ul style="list-style-type: none"> <li>• The type of housing rent when a natural/private person rents the dwelling, which was acquired for him or his family needs and which temporarily become unnecessary in the everyday life;</li> <li>• A natural/private person receives rental housing income not from personal activity tied with the pursuit of profit and his rental activity is not the object to registration as an individual activity's executors and he does not have obligation to obtain business license;</li> <li>• In the activity of this housing rent type where is no element of public task;</li> <li>• In dwelling stock commercial housing rent occupies 9 percent in general. There is no data that part</li> </ul>

	<p>of the 9 percent is occupied by the natural persons providing commercial-non-professional housing rent activity;</p> <ul style="list-style-type: none"> <li>• This type of housing rent is the subject to regulation of the CC<sup>139</sup>. There are no special requirements for lessors and tenants;</li> <li>• In these cases lessor and tenant are considered like equivalent parties. They are free to provide lease terms which do not contradict with laws.</li> </ul>
<p>Rental housing for which a <b>public task</b> has been defined</p> <p>(Housing for which government has defined a task; often non-profit or social housing that is allocated according to need, but not always)</p>	
<p>5) Municipal tenancy 6) Housing association tenancy 7) Social tenancy 8) Etc.</p>	
<p>Municipal tenancy (Social tenancy)</p>	<ul style="list-style-type: none"> <li>• Landlords (lessors) are the Municipalities;</li> <li>• Housing rent with a public task is called social housing (noncommercial, municipality owned living premises that are rented based on the governmental order of determining the rent fee);</li> <li>• It is nominated for rent housing to low income persons and families;</li> <li>• There is no other form of support (like rental housing in private housing market for people with low income) in Lithuania;</li> <li>• The social housing in Lithuania is</li> </ul>

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<sup>139</sup> *Ibid* 9.

	<p>considered as the part of the Social Support and the Social Integration, which is provided by the Municipalities, so Municipal tenancies are equivalent to Social tenancies, i. e. they are the synonyms in the Lithuanian rental regulation;</p> <ul style="list-style-type: none"> <li>• The rent of social housing is regulated by the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>140</sup> and by the Municipalities executive authorities acts;</li> <li>• In this case the tenant has more guarantees, more security than in the case of commercial housing rent. Here the tenant is treated like weaker party. This type of lease is strictly controlled by the State and Municipalities;</li> <li>• In dwelling stock these regulatory type of tenure occupies 3 percent. This amount should increase because there are people who need social housing, but still do not have it, and because one of the State housing policy aims is to increase the amount of social housing.</li> </ul>
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- For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?

In Lithuania are relevant these types of housing rent:

- commercial housing rent:

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<sup>140</sup>*Ibid* 39.

1.1. “active housing rent” or commercial-professional rent

1.1.1. provided by natural persons, who have their business licenses and who are the subjects of tax law;

1.1.2. provided by legal persons who are the subjects of tax law.

1.2. “passive housing rent” or commercial-non-professional rent is

when a natural/private person rents the dwelling, which was acquired for him or his family needs and which temporarily become unnecessary in the everyday life, he exercises rental housing activity called “passive rent” and the income from such activity is not considered as the personal income and it is not the object of the Law on the Personal Income Tax of Lithuania.

▪ social housing rent

Social housing rent is the housing rent activity conducted only by the Municipalities for low-income persons (families) who satisfy the special requirements set in the in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)<sup>141</sup>.

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<sup>141</sup> *Ibid* 39.

## 5. Origins and development of tenancy law

- What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?

In terms of the origin of national tenancy law there is it is necessary to give a brief overview of certain historical periods related to the development of Lithuanian contract law as tenancy law without the public task (commercial rent) is a part of Lithuanian contract Law.

### **The Lithuanian Statutes period and Russian legislation (1529 – 1840 and 1840 – 1918)<sup>142</sup>**

Lithuanian Statutes, which were adopted on 1529, 1566 and 1588 were influenced of Roman law and, contained many provisions on contract law. Some of them were designated to lease contracts, for example The Third Lithuanian Statute of 1588 was in force in the largest part of Lithuania for more than 250 years – until 1840, when it was replaced by Russian Legislation. However, under the rule of the Russian Empire, there were three separate civil law systems in force in Lithuania: in Suvalkija the Napoleonic Code was still applied, whereas the German law was in force in Klaipėda Region.

### **Period 1918 – 1940<sup>143</sup>**

In 1918, when Lithuania declared independence, many Lithuanian lawyers proposed preparing the CC. The Lithuanian CC was based on the newest codification of that time – the Swiss Civil Code and Swiss Code of Obligations. A Commission for the preparation of the CC by the beginning of 1940 prepared several parts of the draft CC, between them – General Part of the Law of Obligations, but the work of the Commission was interrupted by the war.

### **The Soviet period (1940 – 1990)<sup>144</sup>**

During the Soviet period the former legal system in Lithuania was replaced by the Soviet legal system. From 1940 until 1964 the Civil Code of Russian Federation of 1922 was applied in Lithuania. In 1964 the Lithuanian CC was adopted but it was a copy of the Civil Code of the Russian Federation.

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<sup>142</sup>Principles of European Contract Law with Comments and Notes, Parts I & II (1999) and III (2003) and translations. Kluwer Law International (Hague, The Netherlands, 1999, 2003).

<sup>143</sup>*Ibid.*

<sup>144</sup>*Ibid.*

At this period contract law did not have a big importance due to the liquidation of the institute of private ownership and transformation from market to planning economy.

It should be noted that on 2 December 1982 the Code of flats of the Lithuanian Soviet Socialist Republic was adopted<sup>145</sup>. This was the special law for regulation of the legal relationship related to the dwellings so the dwelling rent was eliminated from the Civil Code which regulated the dwelling rent before the adoption of this new law. The Code of flats was applied until 16 June 1998 when it was annulled<sup>146</sup>.

### **The codification of civil law after 1990 and the CC of 2000<sup>147</sup>**

After the declaration of Independence on 11 March 1990 and after the Lithuanian State was internationally recognized the Working group for the preparation of the new CC was formed. This Working group prepared cosmetic amendments of the CC of 1964, which were adopted by the Parliament in 1994 and which remained in force until 1 July 2001.

The new Working group in 1999 presented to the Ministry of Justice the Draft CC prepared under examples of the Civil Code of the Netherlands and the Civil Code of Quebec.

The CC was adopted by the Parliament on 18 July 2000 and entered into force on 1 July 2001.

The CC consists of 1994 Articles, which are divided into 6 Books. The Part Four of the Book Six 'Law of Obligations' establishes specific types of contracts including lease. The lease is very exhaustively regulated. It should be noted that in the Civil Code can be found few provisions on the tenancy with public task. The provisions of contract law here are unified and harmonized with UNIDROIT Conventions on International Financial Leasing and International Factoring.

So in summary it could be said that the real origin of national tenancy law arises from the CC of 2000, although its rudiments could be already found in the Lithuanian Statutes.

The main provisions of national tenancy law are laid down in the CC. But the special provisions of specific tenancy types are laid down in the special laws (for example, there is the Law on Land sales and rental arrangements and conditions for foreign diplomatic missions and consular posts; the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization); and so on), Resolutions of the Government, Orders of the Ministers and Municipalities authorities' acts. With regard to the case law, it should be mentioned that the Supreme Court of Lithuania forms the national case law and together certain rules of the tenancy regulation.

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<sup>145</sup> The Code of flats of the Lithuanian Soviet Socialist Republic (amended and supplemented), Official Journal, 1982, No. 34-377.

<sup>146</sup> The Law on recognition of invalidity of the Code of flats of the Lithuanian Soviet Socialist Republic (amended and supplemented), Official Journal, 1998, No. 59-1656.

<sup>147</sup> *Ibid* 148.



Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of home vs. just a place to live in Scandinavia)

The political driving force for adoption of the CC of 2000 was the new one political force of the independent Lithuania and this new political force sought to create the market economy and to drift from the Soviet law.

The general idea was that firstly the man is responsible himself for his life conditions and the State has to afford the aid only for people who need social welfare. Considering the new conception of the consumer-oriented society, the lessor was inaugurated as the weakest party of the rent contract, so the authors of the new CC sought to incorporate in the new CC special rules which should protect and defend the lessor.

To what extent was tenancy law since its origins influenced by fundamental rights enshrined in the national constitution and/or international instruments, in particular the ECHR? Is there a constitutional (or similar) right to housing (droit au logement)?

It should be noted that the CC, which was adopted after the declaration of Independence of Lithuania, is unified and harmonized with European instruments of tenancy law. In terms of the influence of the ECHR, it could be said that the Constitution of Lithuania (Article 24) guarantees the right of dwelling immunity (inviolability), i.e. it does not directly include the right for dwelling. Article 52 guarantees the social support of the State. It could be said, that the right for dwelling is the derivative right from the rights indicated in the Constitution of Lithuania (such Articles of the Constitution of Lithuania are mentioned above).

## **6. Tenancy regulation and its context**

### **6.1. General introduction**

- Give a very short overview over central rules such as basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased).

### **Principal central rules of tenancy contracts**

It should be noted that there are different rules for conclusion of tenancy contracts without public task and of tenancy contracts with public task.

- The central rules of tenancy contracts without public task are set in the Part Four of the Book Six of the CC (in the section one named "General provisions" of the chapter XXXI named "Lease of dwellings"). In Lithuania the dwelling's rent contract is considered as a special kind of the rent

contract. It means that the general rules regulating the rent contract are applicable in so far as the special rules of the dwelling's rent contract do not establish the special regulation.

*Concept of a contract of lease of a dwelling (the Article 6.576 of the CC):* Under a contract of lease of a dwelling, the lessor shall undertake an obligation to provide for payment the lessee with dwellings for temporary possession and use for residence, while the lessee undertakes an obligation to use the premises in accordance with their designation and pay the price of lease.

*Grounds for contract forming (the Article 6.577 of the CC):* In the event where the lessor is the state, municipality or a legal person, a contract of lease of a dwelling shall be formed in a written form. It shall be signed by an authorized official and the lessee. Contracts of lease between natural persons may be formed orally. A fixed-term contract of lease of a dwelling shall be formed in written form irrespective of who is the party thereto. A contract of lease of a dwelling may be invoked against third persons only in the event of it being registered in the Public Register within the procedure established by laws.

*Content of a contract (the Article 6.580 of the CC):* A contract of lease of a dwelling shall include the following data: the address of the leased premises, number of rooms or any other premises, dwelling space, engineering (technical) installations present in the premises, the appurtenances and the conditions for the use of common premises, amount of the lease payment and periods for this payment, procedure for the payment for public utilities. A contract of lease of a dwelling may likewise provide for other conditions. At the time of concluding a contract of lease of a dwelling, the lessor shall be obliged to submit to the lessee a copy of the by-laws of the dwelling-house condominium or any other document establishing the requirements for the care, use and maintenance of common premises and other rules. A copy of this document shall be an inherent part of a contract of lease of a dwelling. Nevertheless, a lessee shall have no right to demand dissolution of the contract of lease of a dwelling solely on the grounds of the lessor's failure to furnish him with a copy of this document.

It should be noted that according to the Paragraph 3 of the Part 3 of the Article 43<sup>1</sup> of the Law on construction of Lithuania<sup>148</sup> the lessor must transfer to the lessee the energy performance certificate of building or its part or a copy of it.

*Duration of the contract (the Article 6.582 of the CC):* A contract of lease of a dwelling may be formed for an indeterminate term or for a fixed term. A written contract of lease shall be deemed to be concluded from the date of its signature by the parties, while an oral contract shall become binding from the day when the parties agree on the conditions of the contract or a permission to take residence in the premises concerned is given.

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<sup>148</sup>The Law on the construction of the Republic of Lithuania (amended and supplemented). Official Journal, 1996, No. 32-788.

*Payment of rent (the Article 6.583 of the CC):* The lessee shall be obliged to effectuate payment for the lease of the dwelling. The lessee shall be obliged to effectuate the lease payment for the dwellings every month not later than by the twentieth calendar day of the following month unless other periods are provided for by the agreement of the parties. Payment of lease for the state and municipality dwellings shall be calculated in accordance with the procedure established by the Government. Lease payment for the dwellings of enterprises, offices and organizations leased out to their employees shall be determined in the collective agreement, and in the instances where organizations do not conclude such agreements, it shall be determined by an agreement between the organization and the employee concerned, though the maximum amount of the lease payment may not exceed the maximum lease payment determined in accordance with the procedure established by the Government. The contract of lease of a dwelling may provide for a modification of the amount of lease payment upon the agreement of the parties, but not more often than once a year. The clauses of a contract of lease of a dwelling providing the lessor with the right to unilaterally perform modification of the lease payment or to demand such recalculation before the expiry of a twelve-month period from the date when the contract was formed or more often than once a year shall be null and void.

*Termination of a contract upon the violation of conditions of the contract of lease by the lessee (the Article 6.611 of the CC):* In the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided. In the event where the lessee, his family members or other persons residing together with him create by their improper behavior such conditions which render it impossible for other persons who reside together or in the neighborhood to lead normal life, they may be evicted upon the request of the lessor or the latter persons without other dwelling being provided.

*Right of a lessee to dissolve the contract (the Article 6.609 of the CC):* The lessee of a dwelling shall have the right to dissolve the contract of lease by warning the lessor in writing a month in advance. In the event of failure by the lessee to comply with this requirement, the lessor shall have the right to compensation of damages caused.

- The central rules of tenancy contracts with public task are set in the Part Four of the Book Six of the CC (in the section one named "General provisions" of the chapter XXXI named "Lease of dwellings") and in the Law on state support. The Law on state support provides criteria of eligibility for tenants in the Article 8. Tenant may be granted of social housing or of social housing improvement.

*Selection procedure of tenants* is set in the Article 11 of and in the Municipalities executive authorities acts.

*Breach of contract by the tenant:* if the social housing contract is terminated because the family or individual breached its conditions, the family or individual have right to conclude the new one social housing contract only after 5 year from the contract interruption's day (the Article 8 para 3 of the Law on state support).

*Tenant's relocation:* parties of the contract may include conditions on the tenant's relocation to housing with smaller area. When the family and the person acquire ownership of housing, social housing contract is terminated in accordance with the contract conditions (the Article 11 para 3 of the Law on state support). *Tenant's declaration of assets and income received for the last 12 months:* social housing tenant is required every three years, under the Law on Resident's property/assets declaration, to submit declaration of assets and income received for the last 12 months. If the social housing tenant's (or his family member's) assets or income received in exceed the maximum levels set by the Government, the lease is terminated. Data on declared assets and income received during the month from the date specified in this paragraph must be provided to the Municipality's executive authority. The lease is not terminated if the social housing tenant's (or his family member's) assets or income received for the last 12 months exceed no more than 5 percent of levels set by the Government and if the tenant (or his family member) at the time of the data providing for Municipality's executive authority is registered in the local labor office as unemployed or the tenant (or his family member) is recognized unfit for work un the Law on Social integration of disabled's (the Part 4 of the Article 11 of the Law on state support).

*The fee for cold and hot water, electricity, gas, thermal energy and utilities (trash removal, elevators, common areas and exterior cleaning, etc.)* is taken separately from the social housing rent (*the Article 6.584 of the CC*).

*For temporarily departure* of the tenant, family member or a former member of the family, the right of social housing is left for six months on condition that they will pay the rent and charges for utility services. In cases, indicated in CC, the right of social housing could be left for all period of departure (*the Articles 6.591 –6.594 of the CC*).

### **Social orientation of tenancy law in force**

In Lithuania the dwelling lease is popularly assessed as a temporary solution until one can purchase housing. The lease is preferred by 18-35 years old people, who have not yet developed their family, who have lower-than-average (up to 1,000 Lithuanian litas per month.) income, two-thirds of them live in cities<sup>149</sup>.

As it has already been mentioned in analyzing the Lithuanian housing policy, rental tenures with a public task are called social housing (non-commercial, municipality owned living premises that are rented based on the governmental order of determining the rent fee). There are intended for rent to low income persons and families. In Lithuania there is no other form of support (like rental housing in private housing market for people with low income). The social housing in Lithuania is considered as the part of the Social Support and the Social Integration, which is provided by the Municipalities, so Municipal tenancies are equivalent to Social tenancies, i. e. there are the synonyms in the Lithuanian rental regulation.

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<sup>149</sup> Please read more in part 2.7 Social aspects of the housing situation.

**Habitability (i.e. the dwellings legally capable of being leased)**

Firstly it should be noted that Lithuania has a large informal rental housing market. There is the problem of taxes: commercial-professional lessors seek to avoid taxes and they hide their housing rental activities. Consequently there are no strict data on dwellings legally capable of being leased.

Secondly, the market supply of rental housing is sufficient. As it was mentioned above, people of Lithuania prefer having their own dwellings than living in a rented house. But it should be noted that number of social housing and municipality owned shelters are not sufficient.

Also it should be noted that under the Article 6.581 of the CC<sup>150</sup> only a fit for residence dwelling house or its part, a separate apartment or an isolated dwelling consisting of one or several rooms with related non-residential premises may be a subject matter of a contract of lease of a dwelling. So there are some requirements for the object of the dwelling rent contract – requirements for the dwellings. In CC there is general requirement of the fitness for residence. The special requirements of health and sanitary are established in special laws.

The dwelling should correspond to Hygiene standards, approved by the orders of the Minister of Health of Lithuania, and to Construction Technical Regulations, approved by the orders of the Minister of Environment of Lithuania<sup>151</sup>.

The dwelling must correspond to the approved standards of the microclimate<sup>152</sup>, the standards of the marginal sizes of the noise<sup>153</sup>, the standards of the permissible sizes of vibration<sup>154</sup>, the limits of the concentration of the chemical substances in the habitable

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<sup>150</sup>*Ibid* 9.

<sup>151</sup>Home page of the Ministry of Environment. Available at (in Lithuanian): <<http://lt.lt.allconstructions.com/portal/categories/35/1/0/1/article/4511/gyvenamuju-namu-naudojimo-ir-prieziuros-privalomieji-reikalavimai-ir-ju-igyvendinimo-tvarka>> (last visited 26 Nov. 2012).

<sup>152</sup>The Order No. V-1081 of the Minister of Health of the Republic of Lithuania on the approval of the Hygiene Standard HN 42:2009 „The microclimate of the residences and social purposes buildings“ (29 December 2009). Official Journal, 2009, No. 159-7219.

<sup>153</sup>The Order No. V-604 of the Minister of Health of the Republic of Lithuania on the approval of the Hygiene Standard HN 33:2011 „The marginal sizes of the noise in the residences and social purposes buildings“ (13 June 2011). Official Journal, 2011, No. 75-3638.

<sup>154</sup>The Order No. V-791 of the Minister of Health of the Republic of Lithuania on the approval of the Hygiene Standard HN 50:2003 „The permissible sizes of the vibration in the residences and social purposes buildings“ (31 December 2003). Official Journal, 2004, No. 45-1490.

environment<sup>155</sup>, the limits of the infrasound and sounds of the low rate<sup>156</sup>, the standards of the electromagnetic field in the habitable area<sup>157</sup>.

The dwelling also must correspond to the mandatory requirements of the dwelling use and maintenance<sup>158</sup> (the requirements of fire safety; hygiene, health and environmental protection; safe use; protection against noise; energy-saving), the requirements for dwellings<sup>159</sup> (the requirements of rooms number and useful area, for the room's height, for the room's lighting, the requirements of architecture, the requirements of the suitability for the disabled people, the requirements of the protection of the rights of third parties, the requirements of security and safety from the stealing, the requirements of the protection of the immovable worth's of the culture, the requirements of the accesses in the dwelling, the requirements for the engineering systems, for the parking and elevators, for the afforestation, for the recreation's zones), the special requirements for the dwellings with one or two flats<sup>160</sup>.

- To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)

Lithuania applies the principle of the separation of powers whereby the legislative power is assigned to the Parliament (Seimas). Thus, the Parliament adopts the legal acts of the highest power – the laws, including the laws on tenancy regulation. The Government and the corresponding Ministries provide law's projects to Parliament. For example, The Ministry of Social Security and Labour provides to the Government proposals for laws related to the housing rent with public task (social housing) policy development. It should be noted that the Government and the corresponding Ministries adopt according to their competence the legal acts (Resolutions of the Government, orders of the ministers) which have lower legal power than the laws adopted by the Parliament and which must be accommodated with laws and could not be conflicting with the laws.

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<sup>155</sup>The Order No. V-362 of the Minister of Health of the Republic of Lithuania on the approval of the Hygiene Standard HN 35:2007 „The maximum permissible concentration of the chemical substances in the habitable environment“ (10 May 2007). Official Journal, 2007, No. 55-2162.

<sup>156</sup>The Order No. V-190 of the Minister of Health of the Republic of Lithuania on the approval of the Hygiene Standard HN 30:2009 „Infrasound and sounds of the low rate in the residences and social purposes buildings“ (13 March 2009). Official Journal, No. 38-1466.

<sup>157</sup>The Order No. V-199 of the Minister of Health of the Republic of Lithuania on the approval of the Hygiene Standard HN 80:2011 „The electromagnetic field in the habitable environment“ (2 March 2011). Official Journal, No. 29-1374.

<sup>158</sup>The Order No. 351 of the Minister of Environment of the Republic of Lithuania on the approval of the Construction Technical Regulation STR 1.12.05:2002 (1 July 2002). Official Journal, 2002, No. 81 -3504

<sup>159</sup>The Order No. 705 of the Minister of Environment of the Republic of Lithuania on the approval of the Construction Technical Regulation STR 2.02.01:2004 “Dwellings” (24 December 2003). Official Journal, 2004, No. 23-721.

<sup>160</sup>The Order No. D1-338 of the Minister of Environment of the Republic of Lithuania on the approval of the Construction Technical Regulation STR 2.02.09:2005 (1 July 2005). Official Journal, 2002, No. 93-3464.

Lithuania is a unitary state so in talking about the divided competencies of the powers in the regulation of rent relationships we could talk only about the division between the competencies of the State and the competencies of the Municipalities.

It should be noted that under the the Article 6 para 15 and 20 of the Law on the Place's Self-government of Lithuania<sup>161</sup> the Municipalities have competence to form municipal housing fund, to repair social dwellings and to execute social housing rent, to give the permission of the construction.

The Law on the energy from the shifting energy sources of Lithuania<sup>162</sup> have brought for Municipalities new energy sector planning requirements. The Article 12 of the Law<sup>163</sup> stipulates that Municipalities prepare and, in agreement with the Government or its authorized institution:

- approve and implement renewable energy development action plans;
- organize the supply of heat energy for the Municipality, to the heat energy to be from renewable energy resources;
- develop and maintain local renewable energy resource development funding programs and funds procedure;
- provide advice and organize training programs on renewable energy development and utilization of the benefits and practicalities, and perform other functions prescribed by the law .

- Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?

The CC<sup>164</sup> indicates that *“under a contract of lease one party (lessor) shall be obliged to grant to the lessee a thing for payment in temporary possession and use, and the other party (lessee) shall obligate himself to pay a lease payment”*. The lessee here is described as *“a natural person who concludes a contract of lease of a dwelling in his own name and in his own interests, or those of his family, or the former members of his family”*. Thus the tenant is considered only as a temporary possessor or as a temporary user but his rights is not considered as a real property rights. It should be mentioned that the rights of tenant are not considered as a real property right also in the tax law. The owners of rental housing must pay the taxes for their real estate and the tenants have not such tax obligations.

- To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?

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<sup>161</sup>The Law on the Place's Self-government of the Republic of Lithuania (amended and supplemented). Government Journal, 1994, No. 55-1049.

<sup>162</sup>The Law on the energy from the shifting energy sources of the Republic of Lithuania (amended and supplemented). Official Journal, 2011, No. 62-2936.

<sup>163</sup>*Ibid.*

<sup>164</sup>*Ibid* 9.

General rules of the tenancy law are set in the laws – in the CC, the Law on state support.. Special statutes (Resolutions of the Government, orders of the ministers, and acts of the Municipalities authorities) are appointed to specify the regulation of the laws. They are additional but not general instrument of regulation.

The majority of rules which are set in the CC for the tenancy regulation are dispositive according to the principle of the freedom of contract parties, i. e. the contract's parties may agree conditions of contract which are not infringing the laws.

The rules regulating social housing, which are set in the CC and in the Law on state support, are mandatory because their subject matter has a public element and social purpose.

The relationship between general and special rules work properly so as to create legal certainty because in the CC itself it could be found established the general rule that the regulation of the CC applies if the other laws do not stipulate any other specific regulation.

- What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?

Under the CCP<sup>165</sup> courts of general jurisdiction deal with the disputes arising from civil, family, labor, intellectual property, competition, bankruptcy, restructuring, procurement and other private legal relations. So the disputes, which are arising from the tenancy relationship, are judged in courts of general jurisdiction. According to the CCP of Lithuania all civil cases of first instance are judged in the district courts, except cases, which under the CCP are assigned to judge at first instance for the regional courts. In the cases of tenancy disputes it could be the disputes where the sum of the claim is more than one hundred fifty thousand litas.

Here it should be noted that the dispute, which arises from social housing contract, will be assigned to courts of general jurisdiction because the contract of social housing is concluded under the provisions of the CC. But the dispute, which is arising from Municipality's actions or acts, related to the social housing, will be assigned to administrative courts because this dispute is arising from administrative legal relations.

Hence there is no special jurisdiction for the tenancy disputes. Possibilities of appeal in the disputes, which are arising from the tenancy relationships, are ordinary, there are no any particularities.

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<sup>165</sup>The Code of Civil Procedure of the Republic of Lithuania (amended and supplemented), Official Journal, 2002, No. 36-1340.



It should also be noted that the person could make a complaint against the decision of the first instance court to the appellate court and its decision could be revised in the cassation court.

- Are there regulatory law requirements influencing tenancy contracts

Yes, there are regulatory law requirements influencing tenancy contracts which are listed below.

There are typical regulatory requirements influencing tenancy contracts: (i) the form of contract; (ii) regulatory law requirements re - new and/or old - habitable dwellings capable of being rented; (iii) regulatory law requirements re regulation on energy saving; (iv) requirements of health and sanitary of the dwelling; (v) requirements of the dwelling use and maintenance.

- E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)

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Under the Article 6.478 of the CC *“a contract of lease for immovable things for a period of more than one year may be invoked against third persons only in the event if it is registered in the Public Register in accordance with the procedure established by laws”*. According to the Law on the Registry of the Real Estate of Lithuania<sup>166</sup> the real estate registry entry about a real estate may be made on lease legal fact. So in Lithuania there is no duty to register lease contracts. This is left for self-determination of the contract parties. Generally lessors avoid of lease contract registration because of profit taxes: if they officially register the lease contract, from which they receive income, they have duty to pay profit tax for these income from the housing lease activity. If they do not register lease contracts there are no official proof about income from the housing lease activities.

The institute of the registration in the concrete residence, which was known in the Soviet law, now is canceled and presently procedure of the declaration of the residence is applicable. In the Law on the declaration of the residence of the Republic of Lithuania<sup>167</sup> there are no special rules on the registration of tenants, but according to the regulation that the person who is declaring his residence, must provide the data about residence owner if he is not the owner himself, let to maintain that there is some kind of the tenant personal registration when he declares his residence.

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<sup>166</sup>The Law on the Registry of the Real Estate of the Republic of Lithuania (amended and supplemented). Official Journal, 1996, No. 100-2261.

<sup>167</sup>The Law on the declaration of the residence of the Republic of Lithuania (amended and supplemented), Official Journal, 1998, No. 66-1910.

Different situation is in the domain of non-commercial housing rent. Under the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) the Municipalities register the potential social housing tenants. The Municipalities also store the information about the social housing contracts but it is not an official State register.

- Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.

Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented are set in the Construction Technical Regulations approved by the orders of the Minister of Environment of the Republic of Lithuania. For example, in the Construction Technical Regulation "Residential buildings"<sup>168</sup> are set requirements for the buildings size, its room's size, etc.

- Regulation on energy saving

Regulatory law requirements on regulation on energy saving are also set in the Construction Technical Regulation approved by the orders of the Minister of Environment of the Republic of Lithuania. The Construction Technical Regulations approved by the orders of the Minister of Environment of the Republic of Lithuania establish:

- the procedure to qualify for a right to certify energy performance of buildings<sup>169</sup>;
- the building's fundamental requirement of the energy's economy and preservation of warm<sup>170</sup>;
- the energy performance of buildings and certification of energy performance<sup>171</sup>.

The requirements of the energy-saving are set in the Law on the construction of Lithuania<sup>172</sup>. The law states that all new dwellings and dwellings which are in the process of modernization must meet the requirements of the category of the appropriate energetically usefulness.

- What is the role of estate agents? What are the usual services they provide in the area of rental housing?

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<sup>168</sup>Available at the homepage of the Ministry of Environment (in Lithuanian): <[http://www.am.lt/VI/article.php3?article\\_id=4958](http://www.am.lt/VI/article.php3?article_id=4958)> (last visited 28 Nov. 2013).

<sup>169</sup>The order of the Minister of Environment of the Republic of Lithuania No. D1-972 on the approval of the description of the procedure to qualify for a right to certify energy performance of buildings STR 1.02.09:2011 (14 December 2011). Official Journal, 2011, No. 157-7448.

<sup>170</sup>The order of the Minister of Environment of the Republic of Lithuania No. D1-131 on the approval of the building's fundamental requirement of the energy's economy and preservation of warm STR 2.01.01(6):2008 (12 March 2008). Official Journal, 2008, No. 35-1255.

<sup>171</sup>The order of the Minister of Environment of the Republic of Lithuania No. D1-624 on the approval of the energy performance of buildings.Certification of energy performance STR 2.01.09:2005 (20 December 2005). Official Journal, 2005, No. 151-5568.

<sup>172</sup>*Ibid* 71.

The Lithuanian Association of Real Estate Agencies was established in 2007 to unite the Lithuanian real estate agencies in a common goal - the creation of more favorable conditions for the development of real estate activity consisting prevention of illegal trade in real estate. Members of the Association may be legal persons engaged in or intending to engage in mediation in the purchase, sale, or lease of assessing real property in favor Association activities and objectives<sup>173</sup>.

The real estate agents who are acting in the dwelling rent market provide appropriate services for both lessors and lessees. For lessees they help to find the dwelling according to lessee's needs and requests and his financial situation. For lessors the help to rent the dwelling for faithful and responsible lessees and to get best rent fee. The real estate agents also prepare rent contracts.

It should be noted that in Lithuania where are no many of people who use the real estate agents services in the dwelling rent market. The people prefer to rent dwelling without agents because of two reasons. The first one is the reason that they don't want to pay the salary to agents. The second reason is that, how is mentioned above, people avoid to conclude the lease contracts because the taxes and the agents in their practice work only with contracts between lessor and lessee.

## 6.2. The preparation and negotiation of tenancy contracts

- Freedom of contract
  - Are there cases in which there is an obligation for a landlord to enter in to a rental contract?

In the Lithuania there are no cases where there is a direct obligation for a landlord to enter in to a rental contract. But where are some provisions which indirectly restrict the landlord's freedom of contract.

Taking about the dwelling rent without public task, the CC establishes some provisions which indirectly restrict the landlord's freedom of contract:

1. The Article 6.578 of the CC<sup>174</sup> indicates that the lessor shall have no right to refuse forming a contract of lease of a dwelling with a person, or to prolong it, or to impose more onerous conditions on the lessee for the sole reason that the person concerned is a pregnant woman or this person has minor children, with the exception of cases where such refusal is justified by the size of the dwelling or by the arrest thereof;
2. The Article 6.607 of the CC<sup>175</sup> provides that upon expiration of the term of the contract of lease, the lessee shall have priority right to conclude a contract of lease of the dwelling for a new term providing that he duly performed the conditions of the

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<sup>173</sup>Homepage of the Lithuanian Association of Real Estate Agencies. Available at (in Lithuanian): <http://www.lnta.lt/> (last visited 16 Jan. 2013).

<sup>174</sup>*Ibid* 9.

<sup>175</sup>*Ibid*.

contract. The contract shall be renewed for the same term, and where the previous term of the contract exceeded twelve months, the contract shall be renewed for a term of twelve months unless the parties agree otherwise;

3. The Article 6.685 of the CC indicates that in the event of the right of ownership to a dwelling having passed from the lessor to another person, the contract of lease of a dwelling shall remain valid in respect of the new owner, providing the contract of lease of a dwelling was registered in the Public Register within the procedure established by laws.

Taking of the dwelling rent with public task, it should be noted that in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania we can find the indirect obligation of Municipalities, landlords of dwellings, to enter into a rental contract with a person who meets the requirements set in the law..

- Choice of tenant
  - How does the landlord normally proceed to find a tenant?

In Lithuania the landlord in the case of dwelling rent without public task normally proceed to find a tenant in few manners:

- (i) the landlord can find tenant by the advertisement in the radio, newspapers and internet;
- (ii) the landlord can find tenant by the recommendations of the family members and friends;
- (iii) the landlord can find tenant using the services of the real estate agents or agencies.

In the case of the dwelling with social task the tenants himself apply under written request to the landlords – Municipalities to get social housing (to conclude rent contract).

- What checks on the personal and financial status are usual?

Here you can find usual checks on the personal status of the tenant in the case of the rent of dwelling without public task: age and gender of tenant, marital status, number of family members, number of children, state of health of tenant and his family members and their diseases, previous conviction(s) of tenant or his family members, profession of tenant and his position, domestic animals of tenant.

Here you can find the financial status of the tenant in the case of the rent of dwelling without public task: salary, credits and debts, permanent work.

It should be noted that these checks are not fixed in any laws. They are formed by the rent market practice.

In the case of the rent of dwelling with public task the usual checks on the personal and financial status of the tenant are set in the Law on state support. These checks are: income of tenant, possession of his own housing, number of children in family, disability level and the declaration unfit for work or partially capable of work of tenant or his family member, retirement age of tenant, special needs of tenant or his family member, chronic

diseases of tenant or his family member, status of the tenant of the former orphan and former child without parental care.

- How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of “bad tenants”? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?

In Lithuania the information on the potential tenant of the dwelling without public task can be gathered lawfully by using some free and some paid services of the state company VĮ Registrų centras<sup>176</sup>. This company can submit data about real property possessed by the person, about real property soak and arrest, i. e. some data about tenant's financial status. The Central Mortgage Office also provides paid services and submits data about person's registered testaments, marriage's contracts, powers of attorneys. The data about tenant's conviction(s) from the Information Technology and Communications Department under the Ministry of the interior of Lithuania can be submitted only for tenant himself so the landlord could not get such data.

Also there are private companies, which provide the services of the debts recovery and gather the information about the debtors. These debts recovery companies provide the information about debtors and their obligations for the appropriate salary<sup>177</sup>.

There are no other special methods to gather the personal information about the concrete tenant. The landlord can only search such information in the internet.

In the case of the rent of the dwelling with public task, according to the Law on state support, the tenant himself must provide for the Municipality, for the landlord, his appropriate personal and financial data.

In Lithuania there are no public blacklists of “bad tenants”. The real estate agents and agencies have such blacklists but they do not publish such blacklists because it is unlawful and it is violation of the person rights. They only advise to the clients about such “bad tenants”. So these blacklists exist only unofficially and it is not the matter of data protection.

- Ancillary duties of both parties in the phase of contract preparation and negotiation (“culpa in contrahendo” kind of situations)

In the laws of Lithuania there are no special provisions on ancillary duties of parties in the phase of dwelling rent contract preparation and negotiation. In the case of dwelling rent contract are applicable general principles of obligations of parties in pre-contractual

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<sup>176</sup> About Real Property Register and Cadaster please see (in Lithuanian): [<http://www.registrucentras.lt/ntr/index\\_en.php#>](http://www.registrucentras.lt/ntr/index_en.php#) (last visited 17 Jan. 2013).

<sup>177</sup> About the notices on the debtors please see (in Lithuanian): [<https://www.manocreditinfo.lt/Paslaugos/skolininku-viesinimas>](https://www.manocreditinfo.lt/Paslaugos/skolininku-viesinimas) (last visited 26 Nov. 2013).

relationships settled in the Article 6.163 of the CC. So the parties of the dwelling rent contract have these obligations of the pre-contractual relationships:

- (i) the parties shall conduct themselves in accordance with good faith;
- (ii) the parties shall be free to begin negotiations and negotiate, and shall not be liable for failure to reach an agreement;
- (iii) the parties shall be bound to disclose to each other the information they have and which is essentially important for the conclusion of a contract;
- (iv) if in the course of negotiations one party furnishes the other with confidential information, the party that has learned or received such information shall be under the duty not to disclose it, or do not use it unlawfully for his own purposes, irrespective of whether a contract is subsequently concluded or not.

It should be noted that these principles are applicable both for dwelling rent without public task and dwelling rent with a public task. According to the Article 10 para 3 of the Law on state support the social housing tenant and the Municipality conclude the social dwelling rent contract under the provisions of the CC.

### Preparation and negotiation of tenancy contracts

	Dwelling rent without a public task	Dwelling rent with a public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Freedom of contract	The CC establishes some provisions which indirectly restrict the landlord's freedom of contract	The Law on state support establishes the indirect obligation of Municipalities, landlords of dwellings, to enter in to a rental contract with a person who meets the requirements set in the law.	1. Dwelling rent with a public task 2. Dwelling rent without a public task
Choice of tenant	(i) The landlord can find tenant by the commercials in the radio, newspapers and internet; by the	(i) The tenants himself apply under written request to the landlords – Municipalities to	1. Dwelling rent with public task 2. Dwelling rent without public task

	<p>recommendations of the family members and friends; using the services of the real estate agents or agencies.</p> <p>(ii) The landlord gather himself personal and financial data about tenant and assesses it.</p>	<p>get social housing (to conclude rent contract).</p> <p>(ii) The tenant must met the personal and financial requirements settled in the Law on state support. The tenant must provide the information about these requirements for the landlord – the Municipality.</p>	
Ancillary duties	<p>general principles of obligations of parties in pre-contractual relationships settled in the Article 6.163 of the CC are applicable</p>	<p>general principles of obligations of parties in pre-contractual relationships settled in the Article 6.163 of the CC are applicable</p>	The same regulation

### 6.3. Conclusion of tenancy contracts

- Tenancy contracts
  - distinguished from functionally similar arrangements (e.g. licence; real right of habitation)

In Lithuania there are many cases when dwelling tenancy contracts are confused with contracts of uncompensated use of a dwelling (loan for use). But there are also disputes when dwelling tenancy contracts are confused with dwelling's purchase-sale contracts, with deposit contracts, loan contracts and license contracts.

#### *Dwelling's tenancy contracts and contracts of uncompensated use of a dwelling*

These contracts are functionally similar, because under the dwelling tenancy contract the lessor provides the lessee with dwellings for temporary possession and use for residence, and under the contract of uncompensated use of a dwelling one party (lender) transfers a dwelling for possession and use to another party (loan recipient). Furthermore, there are some analogous duties of the parties of both contracts, for example, the duty with regard to maintenance and preserve the dwelling, the duty to use

the dwelling in accordance with its designation, etc. In summary it should be said that the contract of uncompensated use of a dwelling has the same contract's object with dwelling tenancy contract, for the contract of uncompensated use of a dwelling are applying same requirements for the contract's registration, term, form.

However the CC indicates one main feature which allows to distinguish these functionally similar contracts. This feature is the payment: the loan recipient receives the dwelling for uncompensated possession, while the lessee undertakes an obligation to pay the payment of rent. Also we could distinguish two other differences between these contracts: (i) the lessee does not have any duty to do dwelling's capital repair and the loan recipient has such duty; (ii) the loan recipient has a duty to maintain the dwelling.

#### *Dwelling's tenancy contracts and dwelling's purchase-sale contracts*

The main difference between contracts: in the case of dwelling's purchase-sale contract the ownership of the dwelling is transferred for the purchaser and the lessee obtain only rights to possess the dwelling.

#### *Dwelling's tenancy contracts and deposit contracts*

The dwelling cannot be an object of the deposit contract because under the Article 6.830 of the CC the object of this contract can be only movable things.

#### *Dwelling's tenancy contracts and loan contracts*

The dwelling cannot be an object of the loan contract because under the Article 6.870 of the CC the object of this contract can be only the money or consumable generic things.

#### *Dwelling's tenancy contracts and usufruct*

The Article 4.141 of the CC establishes that usufruct is the right (the right of the usufructuary) of use and enjoyment, granted for a period of a person's life or for a certain period that may not be longer than a lifetime of a person, of a thing of another and of its fruits, products and revenues.

The main differences between the dwelling's tenancy contracts and the usufruct of dwelling are: (i) the grounds for the establishment of the usufruct and the tenancy contract (usufruct of the dwelling may be established by laws, court judgments - in the cases prescribed by laws, and by transactions and the grounds of the dwelling's tenancy are contracts); (ii) the payment (there is no payment for the dwelling's usufruct); (iii) the registration (the rights arising from the usufruct in respect of the thing that must be legally registered and duties in respect of subjects arise only after the registration of the usufruct and the registration of the dwelling's tenancy contracts is not mandatory).

#### *Dwelling's tenancy contracts and rent contract*

According to the Article 4.439 of CC under a contract of rent one party – the payer of rent (debtor) – undertakes an obligation gratuitously or in exchange for the capital transferred to his ownership to perform periodical payments to the other party – the recipient of the rent – of a monetary amount determined in the contract (rent) or to grant maintenance to the recipient of rent in any other form. So the rent contract differently than the tenancy contract can be gratuitous. Moreover a contract of rent shall be subject to notarial certification while the tenancy contract does not have such requirement for its form.



*Dwelling's tenancy contracts and license contracts*

The dwelling cannot be an object of the license contract.

- specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well.

The CC distinguishes these types of dwelling's lease contracts (according to the particularity of contract object and subjects, the purpose of the contract conclusion, the peculiarities of the contract performance, etc.):

(i) common dwelling's lease contract (Articles 6.575 – 6.628);

(ii) special types of the dwelling's lease contracts

- office dwelling premises (Articles 6.618 – 6.622);
- lease of dwelling in hostels (Articles 6.623 – 6.625);
- hotels (Article 6.626);

(iii) homeless shelters and residency in premises of health and social care establishments (Articles 6.627 – 6.628).

Also the CC constitutes these types of dwelling's lease:

(i) lease of dwellings which belong to the state or municipalities (Article 6.577 para 1);

(ii) lease of dwellings which belong to enterprises, offices or organizations their employees (Article 6.577 para 1);

(iii) lease of dwellings leased by enterprises, offices or organizations and natural persons upon commercial grounds (for profit).

According to the different types of dwelling's lease there is different legal regulation of the contract form, execution, modification and interruption, etc.

It should be noted that under the Article 6.581 of the CC the subject matter of the dwelling lease contract can be only a fit for residence:

- dwelling house or its part;
- a separate apartment;
- an isolated dwelling consisting of one or several rooms with related nonresidential premises.

A part of a room or a room which is connected with another room by a common entrance (communicating rooms), likewise non-residential premises (kitchens, corridors, storage rooms, etc.) cannot be a subject matter of a contract of lease of a dwelling. In apartments which are leased to several lessees under separate contracts of lease, such non-residential premises may be leased for common use.

So in Lithuania there are specific tenancy contracts: contracts on furnished apartments; student apartments; contracts on room(s) only (e.g. student rooms); contracts on rooms or apartments located in the house in which the landlord lives himself as well, etc. However the object (the subject matter) of these specific tenancy contracts must satisfy the requirements settled in the Article 6.581 of CC.

- Requirements for a valid conclusion of the contract
  - formal requirements

Under the Articles 6.159 and 6.181 of the CC for the valid conclusion of the contract it is sufficient that the both parties of the contract have civil active capacity and they agree on fundamental conditions of the contract. The form of the contract has an importance for the validity of the contract only in cases indicated by the laws (the Article 1.93 para 2 of the CC). The Article 6.579 of the CC does not indicate that the noncompliance of the form of the dwelling rent contract makes this contract invalid. So where any dispute arises upon the fact of forming or performance of a transaction which fails to meet the necessary requirements for its ordinary written form, the parties lose the right to use testimony of witnesses as evidence to prove the facts indicated above (the Article 1.93 para 2 of the CC).

Under the Article 6.579 of the CC contracts of lease between natural persons may be formed orally.

Only in written form can be formed these contracts of lease:

- (i) in the event where the lessor is the state, municipality or a legal person;
- (ii) a fixed-term contract of lease of a dwelling irrespective of who is the lessor.

It should be noted that Municipalities (the cities' Councils) have confirmed the typical forms of the social housing lease contract.

- *is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc)*

In Lithuania there is no a fee for the conclusion of the contract.

- *registration requirements; legal consequences in the absence of registration*

The dwelling lease contract registration requirements and legal consequences in the absence of registration are established in the Article 6.579 para 4 of the CC: a contract of lease of a dwelling may be invoked against third persons only in the event of it being registered in the Public Register within the procedure established by laws.

Contracts of lease of a dwelling are registered in only one register – the Real Property Register and Cadastre. The dwelling lease contract's conclusion, modification or termination facts in Lithuania are not registered in various registers.

The Real Property Register and Cadastre contains data of all real property objects registered in Lithuania. Information of the Register and Cadastre includes cadastral data and maps, ownership and its history, property restrictions, etc. Data in the Register and Cadastre is public including cadastral maps and most of the archive documents containing cadastral files and copies of transaction documents.

It should be noted that the same provisions of registration are applied also for social housing lease contracts, because, how it is mentioned above, under the Article 10 para 3 of the Law on state support the social housing tenant and the Municipality conclude the social dwelling rent contract under the provisions of the CC. Together it should be noted that in the orders of the rendering of the social housing, approved by the Municipalities' Councils. It is presumable that Municipalities have their local lists or registers of social housing lease contract's conclusion, modification or termination, but these lists or registers cannot be equal for the registration in the Public Register.

- Restrictions on choice of tenant - antidiscrimination issues
  - *EU directives and national law on antidiscrimination*

In Lithuania there are recognized national and European Union antidiscrimination issues by restricting on choice of the tenant.

Since 1 May 2004 Lithuania has become the member of the European Union, anti-discrimination measures settled in the directives were moved to the national legislation. According to the directives the lessor should not have the right to refuse forming a contract of lease of a dwelling with a person regarding his racial or ethnic origin, gender, disability, religion and sexual orientation.

It should be noted that the most relevant directive in the housing antidiscrimination issues is the Directive 2000/43/EC, where it is stated that "access to and supply of goods and services which are available to the public, including housing". But the Directive does not give the definition of "housing", so the implementation of this directive in the national level is with drawbacks and gaps. It must be recognized that Lithuania have transposed the Directive in general terms and there is no special provision concerning housing. Lithuanian legislation refers to access to goods and services generally. The provisions of the Directive 2000/43/EC were transposed to the Law on Equal Opportunities of Women and Men of Lithuania and to the Law on Equal Treatment of Lithuania.

It should be only mentioned that the Article 6.578 para 4 of the CC directly establishes one antidiscrimination measure. It establishes that the lessor shall have no right to refuse forming a contract of lease of a dwelling with a person, or to prolong it, or to impose more onerous conditions on the lessee for the sole reason that the person concerned is a pregnant woman or this person has minor children, with the exception of cases where such refusal is justified by the size of the dwelling or by the arrest thereof.

In Lithuania there are recognized national antidiscrimination issues by restricting choice of the tenant. These antidiscrimination issues are stated in the Law of the Republic of Lithuania on the Equal Opportunities<sup>178</sup> and in the Law of the Republic of Lithuania on Equal Opportunities of Women and Men<sup>179</sup>. The first one forbids to exclude people

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<sup>178</sup>The Law on the Equal Opportunities of the Republic of Lithuania (amended and supplemented). Official Journal, 2003, No. 114-5115.

<sup>179</sup>The Law on the Equal Opportunities of Women and Men of the Republic of Lithuania (amended and supplemented). Official Journal, 1998, No. 112-3100.

considering sex, race, nationality, language, origin, social status, religion and the second one forbids the discrimination concerning the sex.

It could be added that the discrimination is also forbidden by the Article 25 of the Constitution of Lithuania (it is forbidden to exclude people considering sex, race, nationality, language, origin, social status, religion, and creed; under the Constitution of Lithuania the discrimination is a crime) and by the European Convention on Human Rights which is the part of the Lithuanian law.

So Lithuania's law system recognizes antidiscrimination issues in the housing rent market, but these antidiscrimination issues are not formulated and stated in the laws on antidiscrimination measures or in the laws on housing.

In the end, it must be noted that in the case of social housing rent the restrictions on choice of tenant and antidiscrimination issues are not such relevant as in the case of housing rent without public task, because the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania establishes the indirect obligation of Municipalities, landlords of dwellings, to enter in to a rental contract with a person who meets the requirements set in the law , i. e. the lessor cannot assess the lessee's personal and financial characteristics which are not indicated in this special law.

- Limitations on freedom of contract through regulation
  - mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract

Under the CC there are these fundamental provisions in rental contracts:

1. a contract of lease of a dwelling shall include the following data: the address of the leased premises, number of rooms or any other premises, dwelling space, engineering (technical) installations present in the premises, the appurtenances and the conditions for the use of common premises, amount of the lease payment and periods for this payment, procedure for the payment for public utilities (Article 6.580);

2. at the time of concluding a contract of lease of a dwelling, the lessor shall be obliged to submit to the lessee a copy of the by-laws of the dwelling-house condominium or any other document establishing the requirements for the care, use and maintenance of common premises and other rules. A copy of this document shall be an inherent part of a contract of lease of a dwelling (Article 6.580). It should be noted that according to the the Article 43<sup>1</sup> para 3 of the Law on construction of Lithuania the lessor must transfer to the lessee the energy performance certificate of building or its part or a copy of it.

The CC establishes these mandatory rules concerning conditions of the rent contract:

1. null and void shall be the terms of a contract of lease of a dwelling which: establish civil liability of a lessee without the fault thereof; enable the lessor to unilaterally modify the conditions of the lease contract; establish the dependence of the lessee's rights upon the number of his family members, with the exception of cases where the change of the lessee's rights is justified by the size of the dwelling; limit the right of the lessee to purchase things or receive services from persons whom the lessee wishes to choose at his own discretion; provide the lessor with the right to demand from the lessee the

payment of lease in the form of a lump sum for the whole duration of the lease in the event of the lessee's delay to make the payment of lease for one period; enable the lessor to perform unilateral assessment of the state of the dwellings and make a conclusion on it being fit for residence; establish civil liability of the lessee in excess of the actual damage inflicted to the lessor (Article 6.580 para 4 of the CC);

2. the clauses of a contract of lease of a dwelling providing the lessor with the right to unilaterally perform modification of the lease payment or to demand such recalculation before the expiry of a twelve-month period from the date when the contract was formed or more often than once a year shall be null and void (Article 6.583 para 6 of the CC);

3. clauses of a contract of lease of a dwelling which exclude or limit the civil liability of the lessor in respect of the lessee, or which establish liability of the lessee without his fault, shall be null and void (Article 6.587 para 3 of the CC);

4. clauses of the contract of lease of a dwelling which enable the lessor to unilaterally modify the conditions of the lease contract because of an increase in the number of the lessee's family members, or limiting the right of the lessee to purchase things or receive services from persons chosen by the lessee shall be null and void (Article 6.587 para 4 of the CC);

5. clauses of the contract of lease of a dwelling which establish in respect of the lessee penalty in excess of real damages incurred by the lessor, or which provide the lessor with the right to demand from the lessee the payment of lease in the form of a lump sum for the whole duration of the lease in the event of the lessee's failure to make the payment on time shall be null and void. (Article 6.587 para 5 of the CC).

When the lessor is natural or legal person and the dwellings rent is his business a consumer shall have the right to claim within the judicial procedure for invalidity of conditions in a consumer contract that are contrary to the criterion of good faith (the Article 6.188 of the CC). These rights of the consumers are also defended in the Law on the protection of the consumers' rights of Lithuania<sup>180</sup>.

Conditions of a consumer contract which have not been individually negotiated shall be regarded as unfair if they cause a significant imbalance in the parties' rights and duties to the detriment of consumer rights and interests, i.e. the conditions which:

1) exclude or limit the civil liability of a seller or service supplier for damage caused by the death of a consumer or impairment of his health, likewise for the damage caused to his property;

2) exclude or limit the rights of a consumer vis-à-vis a seller, service supplier or another party in the event of total or partial non-performance or improper performance by the seller or service supplier of any of the contractual obligations;

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<sup>180</sup>The Law on the protection of the consumers' rights of the Republic of Lithuania (amended and supplemented). Official Journal, 1994, No. 94-1833.

- 3) make contractual conditions binding on the consumer where as contractual obligations of the seller or service supplier are subject to other conditions, the realisation of which depends solely on the latter's own will;
- 4) permit the seller or service supplier to retain sums paid by the consumer where the latter decides not to conclude a contract or refuses to perform it without providing for any rights of the consumer to receive in compensation the sums of the same amount from the seller or service supplier when they unilaterally dissolve the contract;
- 5) establish a disproportionately high civil liability of the consumer who fails to fulfil his obligation or fulfils it improperly;
- 6) authorise the seller or service supplier to dissolve the contract unilaterally or rescind it at any time, and no adequate facility is granted to the consumer, or provide the seller or service supplier with the right not to compensate the consumer for the amounts received therefrom before the performance of the contract in the event where the seller or service supplier unilaterally dissolve or rescind the contract;
- 7) enable the seller or service supplier to dissolve an indeterminate contract without any reasonable grounds without due notification of the consumer about such dissolution;
- 8) entitle the seller or service supplier with the right to unilaterally extend a fixed-term contract automatically, or establish unreasonably short time-limit for the consumer to express his opinion upon the extension of the contract, or set forth a requirement for the consumer to express his assent or dissent upon the extending of the contract unreasonably early;
- 9) irrevocably bind the consumer to the conditions with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- 10) enable the seller or service supplier to alter the conditions of the contract unilaterally without there being any contractual or sufficient grounds;
- 11) enable the seller or service supplier unilaterally and without any sufficient grounds to modify any characteristics of the good or services to be provided;
- 12) entitle the seller or service supplier with the right to unilaterally determine the prices of goods and services at the time of their provision, or allow the seller of goods or supplier of services to unilaterally increase the price without providing the consumer with the right to cancel the contract in the case where the final price is higher than that stipulated in the contract. This provision shall not apply for contracts in respect of securities or other financial documents, or for contracts on alienation of things or provision of services where the price is dependent upon the fluctuation of exchange rates or indexes on the exchange, and is beyond the control of the seller or service supplier, likewise for purchase-sale contracts for foreign currencies, travellers cheques or international money orders expressed in a foreign currency;
- 13) entitle the seller or service supplier with the right to unilaterally determine whether the goods supplied or services rendered are in conformity with the requirements of the contract;
- 14) provide the seller or service supplier with the exclusive right to interpret the contract;

- 15) limit the duty of the seller or service supplier to perform obligations undertaken by their agents, or render such obligation subject to compliance with a particular formality;
- 16) obligate the consumer to fulfil all his obligations to the seller or service supplier even in the event of total or partial non-performance by the seller or service supplier of their own obligations;
- 17) provide the seller or service supplier with the right of transferring their rights and obligations under the contract without the consumer's consent, where such transferring may reduce the guarantees for the consumer;
- 18) exclude or hinder the consumer's right to bring action or exercise any other remedy (by requiring the consumer to take disputes exclusively to arbitration, restricting the use of evidence, by imposing on him the burden of proof, etc.).

Such conditions shall be considered as not having been individually negotiated where the consumer is deprived of the possibility to influence the process of their preparation, in particular where such conditions are determined in advance in the standard contract prepared by the seller or service supplier. In the event where certain conditions in the contract prepared in advance were individually negotiated, the provisions established in the present Article shall apply to other conditions of such contract. The burden of proof that such conditions were individually negotiated shall rest upon the seller or service supplier.

The assessment whether a condition of a contract is unfair shall be effectuated taking in regard the nature of the goods and services stipulated in the contract, as well as other circumstances which existed at the time of contract forming and exerted influence thereupon, likewise any other conditions of that contract or those of other contract it depends upon. The conditions which define the subject-matter of a contract, likewise those related with the conformity between the good sold or a service rendered and the price thereof ought not to be subjected to assessment from the point of view of unfairness (i.e. the provisions of this Article para 1 and 2 ought not to be applied) where they are expressed clearly and understandably.

In the event where a court acknowledges a certain condition (conditions) of a contract not fair, it shall have no effect from the moment when the contract was formed while the remaining conditions of the contract shall continue to be binding on the parties, providing that a further performance of the contract is still possible after the elimination of the unfair condition.

The consumer whose interests are violated by the application of unfair conditions shall be entitled to apply also to institutions for the protection of consumer rights.

The institutions for the protection of consumer rights shall be entitled within the procedure established by laws to effectuate control over the standard conditions of contracts and challenge unfair conditions in the consumer contracts. Under the the Law on state support there are such mandatory provisions:

1. if person has infringed the social housing lease contract's conditions and the contract was interrupted, the new contract with this person can be concluded only after 5 years after contract's interruption day (Article 8 para 3);

2. the housing useful area cannot be bigger than 14 sq. m. for one family member (Part Article 9 para 1);
3. it must be made opportunity to have separate room for the different gender childs, for invalid person, for disabled people, for retiree (Article 9 para 2);
4. lease payment is established according to the special order of the Government of the Republic of Lithuania (Article 10 para 1);
5. the tenant must every three years under the special laws declare his property and income for last 12 months and in the period of one month to give these data to the Municipality. If the amount of tenant's property and income is higher than the limits settled by the Government, the lease contract must be interrupted (Article 11 para 4).

- control of contractual terms (EU directive and national law);  
consequences of invalidity of contractual terms

In the national law the mechanism of control of contractual terms validity and consequences of invalidity of contractual terms is established in the CC. It should be noted that the provisions of the CC are applied for both dwelling rent without public task and dwelling rent with public task. In the Law on the state support there are no special provisions about contractual terms validity or invalidity and, as it is mentioned above, this law addresses to CC provisions.

Under the Article 6.586 para 1 of the CC a contract of lease of a dwelling may be acknowledged null and void upon the common grounds of nullity of transactions established in the CC and upon the special grounds of nullity of transactions established in the Book Six of the CC (in the section one named "General provisions" of the chapter XXXI named "Lease of dwellings").

#### *The common grounds of nullity of transactions and its consequences*

The general rule of the nullity of the contract is that the contract is void from its conclusion (*ab initio*) except the cases when the contract is null solely from now on and therefore don't affect past actions (*ex nunc*) According the Article 1.95 of the CC:

1. A transaction, which has been annulled shall be deemed to be null and void *ab initio* (from the moment of its forming).
2. Where from the content of a transaction follows that it is impossible to declare such transaction void *ab initio*, it may be declared void only for the future, i.e. from the time when the judgement acquires the authority of the final judgement (*res judicata*).

The consequences of the nullity are different subject to the cause of the nullity.

According to the Articles 1.80 – 1.93 and Article 6.237 of the CC the consequences of the nullity may be the adjudgement of the damages, the adjudgement of the unjust enrichment, etc.

So under the Articles 1.80 – 1.82 and 1.84 – 1.93 of the CC a contract of lease of a dwelling may be acknowledged null and void upon these common grounds of nullity of transactions:

- 1) null is a transaction that does not correspond to the requirements of mandatory statutory provisions;



- 2) null is a transaction contradicting public order and good morals;
- 3) void is a transaction contradicting the legal passive capacity of a legal person by whom the transaction was formed;
- 4) void is a transaction formed by a natural incapable person;
- 5) void is transaction made by a natural person who overindulges in strong drinks or narcotic substances;
- 6) null is a fictitious transaction;
- 7) null is a simulated transaction;
- 8) a transaction made by a minor from fourteen to eighteen years of age can be declared void;
- 9) a transaction formed by a natural person who was unable to understand the meaning of his own actions can be declared void;
- 10) a transaction formed under the influence of a mistake can be declared void;
- 11) void is a transaction made by a party whose consent was obtained by fraud, extorted by duress, economic pressure or induced by real threatening, likewise of a transaction made by the malicious agreement of an agent of one party with the other party, or a transaction entered into because of abusive circumstances;
- 12) void is a transaction formed by an agent outside the authority conferred on him;
- 13) void is a transaction resulting from the lack of requisites of its form established by laws.

Under common grounds of consequences of invalidity of contractual terms when a transaction is null and void, each party shall be bound to restore to the other party everything he has received according to that transaction (restitution), and where it is impossible to restore in kind the received, the parties are bound to compensate the received to each other in money, unless the laws provide for other consequences of voidness of the transaction (Article 1.80 para 2 of the CC). The rules of restitution are settled in the Articles 6.145 – 6.153 of the CC.

Article 6.188 of the CC and the Law on the protection of the consumers' rights provide that at the contract is null when its conditions violate the consumers rights.,.

*The special grounds of nullity of transactions and its consequences*

Under Article 6.586 of the CC there are these special grounds for acknowledgement of a contract null and void:

- 1) a contract of lease of a dwelling may be acknowledged null and void upon the grounds if the data presented to the lessee in respect of the lessor's rights to the dwellings are misleading;
- 2) a contract of lease of a dwelling may be acknowledged null and void upon the grounds if the contract of lease of a dwelling prejudices valid rights of other persons to that dwelling;

3) a contract of lease of a dwelling may be acknowledged null and void upon the grounds if the actions of officials related to the formation of the contract of lease of a dwelling were unlawful.

According to the Article 6. 580 para 5 of the CC null and void shall be the terms of a contract of lease of a dwelling which:

- 1) establish civil liability of a lessee without the fault thereof;
- 2) enable the lessor to unilaterally modify the conditions of the lease contract;
- 3) establish the dependence of the lessee's rights upon the number of his family members, with the exception of cases where the change of the lessee's rights is justified by the size of the dwelling;
- 4) limit the right of the lessee to purchase things or receive services from persons whom the lessee wishes to choose at his own discretion;
- 5) provide the lessor with the right to demand from the lessee the payment of lease in the form of a lump sum for the whole duration of the lease in the event of the lessee's delay to make the payment of lease for one period.
- 6) enable the lessor to perform unilateral assessment of the state of the dwellings and make a conclusion on it being fit for residence;
- 7) establish civil liability of the lessee in excess of the actual damage inflicted to the lessor.

It should be noted that a contract of lease of a dwelling may not be acknowledged null and void upon the demand of the lessor if he knew or should have known that the other person at the moment of the contract forming by reason of his state was unable to comprehend the meaning of his actions or to control them, or the contract was concluded with a legally incapable lessee (the Article 6.586 para 2 of the CC).

Consequences of invalidity of contractual terms of the dwelling rent contract are set in the Article 6.586 para 3 and 4 of the CC:

- 1) in the event of a contract of lease of a dwelling being acknowledged null and void, the lessee, together with all other people residing with him, shall be evicted without other dwellings being granted to them, except in cases specified in Part 4 of this Article;
- 2) in the event of a contract of lease of state or municipality dwellings being acknowledged null and void on the grounds of it having violated valid rights of other persons to that dwelling while the lessee did not know and could not have known thereof, the lessee, together with all other people residing with him, shall be evicted with another dwelling being granted to them. In other instances, the lessee shall be entitled only to compensation of damages incurred by him.

A contract of lease of a dwelling may be acknowledged null and void during a three-year period from its conclusion date (the Article 6.586 para 5 of the CC).

Talking about EU legislation, it should be noted that the EU legislation, related to the dwellings lease, is transferred to the national regulation, for example the rules of Directive on unfair conditions in the contracts with consumers<sup>181</sup> are transferred in the CC and in the Law on the protection of the consumers' rights of the Republic of Lithuania; the rules of Directive on unfair commercial practice<sup>182</sup> are transferred in the Law on prohibition of the unfair commercial practice with consumers of the Republic of Lithuania<sup>183</sup>.

- statutory pre-emption rights of the tenant

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The Article 6.607 of the CC establishes the priority right of the lessee in renewing the contract of lease: upon expiration of the term of the contract of lease, the lessee shall have priority right to conclude a contract of lease of the dwelling for a new term providing that he duly performed the conditions of the contract. The contract shall be renewed for the same term, and where the previous term of the contract exceeded twelve months, the contract shall be renewed for a term of twelve months unless the parties agree otherwise.

The lessor shall be obliged not later than three months in advance before the termination of the contract of lease to inform the lessee in writing about his proposal to conclude a new contract of lease on the same or different conditions or about his refusal to renew the contract where he does not intend to lease out the premises concerned at least for a period of one year. In the event of failure by the lessor to perform this duty, and if the lessee does not refuse to renew the contract, the contract of lease shall be deemed to be renewed for the same period and under the same conditions.

In the instances where the lessor, after having refused to renew a contract of lease, leases the same dwelling within a period not exceeding one year to another person under the same conditions, the lessee shall have the right to demand acknowledgement of such contract null and void and claim compensation of damages caused by the refusal to renew the contract. This provision shall not apply in the event where the lessee refused to renew the contract under the conditions proposed by the lessor and did not apply to the court for the approval of the conditions of the contract.

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<sup>181</sup>Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts please correct the reference – look into the guidance

<sup>182</sup>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

<sup>183</sup>The Law on prohibition of the unfair commercial practice with consumers of the Republic of Lithuania (amended and supplemented). Official Journal, 2008, No. 6 -212.

Upon renewing the contract, the lessor shall have the right to modify the conditions of the contract of lease, likewise the period of the contract of lease and the amount of the lease payment if he informed the lessee about the intended modification of the conditions in writing not later than three months and not earlier than six months before the expiry of the period of the contract of lease. In the cases where the duration of lease is shorter than twelve months, such notification shall have to be submitted to the lessee not later than one month before the expiry of the time-limit of the contract of lease. The clauses of the new contract of lease must be clearly indicated in such notification.

In the event where the lessee disagrees with the modifications of the clauses of the contract of lease proposed by the lessor, he shall be obliged within one month from the date of receiving the notification to inform the lessor in writing about such disagreement or about a dissolution of the contract of lease. In the event of the lessee failing to comply with this requirement, he shall be deemed to have agreed with the new clauses for the renewal of the contract of lease.

In the event where the lessee objects to the modifications of clauses of the contract of lease proposed by the lessor and informs the latter accordingly within the time-limits, the lessor, wishing to renew the contract of lease under new conditions, shall have the right within one month from the date when he received the notification from the lessee to apply to the court for the determination of the conditions of the contract of lease under judicial proceedings. In case of the lessor failing to do that, the contract shall be deemed to have been renewed under the previous conditions.

It should be noted that in the case of the dwelling rent with public task statutory pre-emption rights of the tenant do not exist, because the tenant right to lease the dwelling depends only on the fact if he has or sustains the criteria settled in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania.

- are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?

Under the Article 4.170 para 5 of the CC the mortgage does not deprive the owner of a thing the right to possess, use and dispose of the mortgaged thing with due consideration of the rights of the mortgagee. So a mortgagor is allowed to lease the dwelling charged by the mortgage if its allowed with due consideration of the rights of the mortgagee.

- Contract concluded through estate agents
  - what is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?

The size or limit of the estate agents commissions are not establish in any laws of the Republic of Lithuania. This size is the object of the deal with real estate agent and depends on time period during which he finds lessor or lessee of the dwelling, on the

rent payment, on the size of the dwelling etc. For example, in the site of one real estate agency<sup>184</sup> are indicated these prices of services related to the real estate rent:

- if the landlord wants to rent his real estate for period longer than 6 months – the price of agent services is equal to the 1 rent payment for 1 month;
- if the landlord wants to rent his real estate for period no longer than 6 months – the price of agent services is equal to the 0,5 of the rent payment for 1 month;
- if tenant wants to rent the dwelling – the price of agent services is equal to the 0,5 of the rent payment for 1 month.

It should be noted that some real estate agencies have their own ethic codes<sup>185</sup> where are some provisions about limitations of the commission. For example, where is established that it is forbidden for the agent to conclude the contract for commission with both parties of the sale-purchase, rent contract, if the agent did not reveal this fact about the “double” commission to the both parties.

In the case of the social dwelling rent the contracts could not be concluded through real estate agents.

### Conclusion of tenancy contracts

	Dwelling rent without public task	Dwelling rent with public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Differentiation from functionally similar arrangement	Dwelling tenancy contracts are confused with contracts of uncompensated use of a dwelling (loan for use), with dwelling's purchase-sale contracts, with deposit contracts, loan contracts and	The contract's object is limited: the dwelling must be the property of the Municipality.	1. Dwelling rent with public task 2. Dwelling rent without public task

<sup>184</sup>See for example: Mediation in renting real estate. (Available at (in Lithuanian): <<http://www.matininkai.lt/lt/tarpininkavimas-nuomojant-nekilnojamaji-turta>> (last visited 24 Jan. 2013).

<sup>185</sup>See for example: Code of Ethics. Available at (in Lithuanian): <<http://www.remax.lt/etikos-kodeksas>> (last visited 17 Jan. 2013).

	<p>license contracts.</p> <p>The general features which allow to distinguish these functionally similar contracts are the payment, the contract's object and the rights of the contract's parties.</p>		
<p>Specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well</p>	<p>In Lithuania where are specific tenancy contracts: contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well, etc. However the object (the a subject matter) of these specific tenancy contracts must satisfy the requirements settled in the Article 6.581 CC: the subject matter of the dwelling lease contract can be only a fit for residence:</p> <p>(i) dwelling house or its part;</p>	<p>The contract's object is limited: the dwelling must be the property of the Municipality.</p>	<ol style="list-style-type: none"> <li>1. Dwelling rent with public task</li> <li>2. Dwelling rent without public task</li> </ol>

	<p>(ii) a separate apartment;</p> <p>(iii) an isolated dwelling consisting of one or several rooms with related nonresidential premises.</p>		
Formal form requirements for a valid conclusion of the contract	Oral or written form of the contract	Written form of the contract	<p>1. Dwelling rent with public task</p> <p>2. Dwelling rent without public task</p>
Registration requirements	A contract of lease of a dwelling may be invoked against third persons only in the event of it being registered in the Public Register (the Real Property Register and Cadastre) within the procedure established by laws.	A contract of lease of a dwelling may be invoked against third persons only in the event of it being registered in the Public Register (the Real Property Register and Cadastre) within the procedure established by laws.	The same regulation
Restrictions on choice of tenant - antidiscrimination issues	Lithuania's law system recognizes antidiscrimination issues in the housing rent market, but these antidiscrimination issues are not formulated and stated in the laws on antidiscrimination measures or in the laws on housing.	The Law on state support establishes the indirect obligation of Municipalities, landlords of dwellings, to enter in to a rental contract with a person who meets the requirements set in the law, i. e. the lessor cannot assess the lessee's personal and financial	<p>1. Dwelling rent with public task</p> <p>2. Dwelling rent without public task</p>

		characteristics which are not indicated in this special law.	
Mandatory provisions of the contract	Mandatory provisions and fundamental provisions are settled in the CC:	Mandatory provisions and fundamental provisions are settled in the CC and in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania	1. Dwelling rent with public task 2. Dwelling rent without public task
Control of contractual terms and consequences of invalidity of contractual terms	This is the object of the CC regulation	This is the object of the CC regulation	1. Dwelling rent with public task 2. Dwelling rent without public task
Statutory pre-emption rights of the tenant	The Article 6.607 of the CC establishes the priority right of the lessee in renewing the contract of lease	There is no of such tenant's right	1. Dwelling rent with public task 2. Dwelling rent without public task
The provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions	A mortgagor is allowed to lease the dwelling charged by the mortgage if its allowed with due consideration of the rights of the mortgagee.	A mortgagor is allowed to lease the dwelling charged by the mortgage if its allowed with due consideration of the rights of the mortgagee.	The same regulation
Contract concluded through estate	The size or limit of the estate agents	The contracts could not be	1. Dwelling rent



agents	<p>commissions are not establish in any laws of the Republic of Lithuania.</p> <p>It should be noted that some real estate agencies have their own ethic codes where are some provisions about limitations of the commission.</p>	concluded through real estate agents.	<p>with public task</p> <p>2. Dwelling rent without public task</p>
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#### 6.4. Contents of tenancy contracts

- Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)

Under the the Article 6.580 para 1 of the CC the description of the dwelling, the indication of his surface are fundamental and mandatory conditions of the contract: a contract of lease of a dwelling shall include the following data: the address of the leased premises, number of rooms or any other premises, dwelling space, engineering (technical) installations present in the premises, the appurtenances and the conditions for the use of common premises, amount of the lease payment and periods for this payment, procedure for the payment for public utilities.

It should be noted that under the Construction Technical Regulation STR 2.02.01:2004 "Dwellings"<sup>186</sup> the useful area of the dwelling for one family member should be no less than 14 square meters (in the cases of the social housing this area could be lesser).

The Article 9 of the Law on state support indicates the dwelling's useful area limit for one family member. The Article 11 para 3 of the Law on state support establishes that parties to the lease agreement may include condition on the tenant's relocation to dwelling of a smaller area and these rules confirms that dwelling's area must be indicated in the contract.

If the data, indicated in the contract, are wrong they must be correct and unfair lessor must compensate the lessee's loss.

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<sup>186</sup>The Order No. 705 of the Minister of Environment of the Republic of Lithuania on the approval of the Construction Technical Regulation STR 2.02.01:2004 "Dwellings" (24 December 2003). Official Journal, 2004, No. 23-721.

- Residence contracts and mixed (residence/commercial) contracts

In the Lithuania the mixed residence/commercial contracts are not allowed, because the Article 6.576 para 1 of the CC indicates that under a contract of lease of a dwelling, the lessor shall undertake an obligation to provide for payment the lessee with dwellings for temporary possession and use for residence.

The Law on the state support provides only the social rent for residence's (the Article 1 para 1).

- Parties to a tenancy contract

The main rule is that dwelling lease contract is bilateral agreement (the Article 6.578 para 2 and 3 CC) but in some cases it could be multilateral.

In the case when the dwelling has two owners there must be the acceptance of both owners to rent the dwelling for tenants (one owner is a part of the rent contract and the other one must give his acceptance to rent the dwelling) or there are two lessors. For example, joint community property shall be used, managed and disposed of by the mutual agreement of the spouses; Transactions related to the disposal or encumbrance of a jointly co-owned immovable or the rights to it, also transactions on the alienation of a jointly co-owned enterprise or securities or the encumbrance of the rights to them may be made only by both spouses except where one of the spouses has been given the power of attorney by the other spouse to enter into such a transaction (Article 3.92 of the CC).

If the dwelling is rent by the family, the one family member is the lessee and the others – the members of lessee's family (Article 6.588 of the CC). In the cases there the dwelling is rent by two students, it will be two lessees.

*- Landlord: who can lawfully be a landlord?*

In the case of the housing rent with social task the landlord can be only the Municipality, which is the owner of the dwelling.

In the case of the dwelling rent without social task the lessor is the owner of the dwellings or the possessor thereof upon any other legal grounds. A lessee may act in the capacity of a lessor of dwellings if he forms a contract of sub-lease under the procedure established by laws. The landlord can be a natural person or a legal person (the Article 6.578 para 2 of the CC). Under Article 2.5 of the CC on attaining full age, i.e. when a natural person is eighteen years of age, he, by his acts, shall have full exercise of all his civil rights and shall assume civil obligations.

*- does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?*

It should be noted that under Article 6.585 of the CC in the event of the right of ownership to a dwelling having passed from the lessor to another person, the contract of lease of a dwelling shall remain valid in respect of the new owner, providing the contract of lease of a dwelling was registered in the Public Register within the procedure established by laws.

This rule is also applicable in the case of the dwelling rent with social task except the cases indicated in the the Article 6.494 para 5 of the CC: in the event of expropriation of the thing for public interests, the contract of lease shall terminate at the moment from which the new owner of the expropriated thing (possessor) acquires possession of that thing.

- *Tenant:*

- *Who can lawfully be a tenant?*

In the case of the housing rent with social task the tenant (only a natural person) must met special personal and financial requirements settled in the Law on state support.

In the case of the dwelling rent without social task a lessee can be an adult (major) natural person who concludes a contract of lease of a dwelling in his own name and in his own interests, or those of his family, or the former members of his family. In the event where a minor who does not have parents or cannot live with them remains residing in the dwelling, a contract of lease of the dwellings in his name may be formed by a person authorized by laws (the Article 6.578 para 3 of the CC).

Dwellings may be provided for the possession and/or use of legal persons on the grounds of a contract of lease of a dwelling or upon any other contract. Such dwellings may be used by the legal person exclusively for housing natural persons (the Article 6.578 para 5 of the CC).

The tenant is a weaker party of the contract.

In the case of the dwelling lease with public task the rent process is strictly controled by the Municipalities.

*When the lessor is natural or legal person and the rent of dwellings is his/her business,* a consumer shall have the right to claim within the judicial procedure for invalidity of conditions in a consumer contract that are contrary to the criterion of good faith (Article 6.188 of the CC). These rights of the consumers are also protected by the Law on the protection of the consumers' rights of the Republic of Lithuania.

*When the lessor is natural or legal person and the rent of dwellings is not his/her business,* the provisions CC (for example, Part 4 of the Article 6.578 para 4, the Article 6.580 para 3 and 4, etc.) also protect the lessee as a weaker part of the contract.

- *Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?*

Members of the lessee's family are allowed to move in an apartment together with the lessee.

*Members of the lessee's family*

Under the Article 6.588 of the CC the members of the lessee's family are:

(i) the spouse (cohabitant), their minor children, parents of the lessee and those of the spouse residing together with the lessee. Children of full age, their spouses (cohabitants) and grandchildren of the lessee shall be attributed to his family members in the event of their maintaining common household with the lessee;

(ii) guardians and those under guardianship, having taken residence in the dwellings of their guardian or person under guardianship shall not acquire the rights of a member of the family of the guardian or person under guardianship. In the event where they continue to reside together and maintain common household after the termination of guardianship, they may be acknowledged family members under judicial proceedings upon the claim of any of them;

(iii) close relatives, other dependants who have resided with the lessee, his family members or with any one of them at least for a period of one year and have maintained common household, may be acknowledged family members of the lessee under judicial proceedings.

By taking residence in the leased dwelling, parents, children of full age and their spouses (cohabitants) shall acquire the rights of family members if they maintain common household with the lessee and upon consent of the lessee and his family members.

The lessee and his family members of full age shall be liable towards the lessor for the actions of the lessee's family members who violate the contract of lease of a dwelling.

The number of persons residing in a dwelling shall be limited by the necessity to ensure normal sanitary conditions and availability of normal conveniences for each of them.

#### *Right of family members to take occupancy of the leased dwelling*

Under Article 6.590 CC in accordance with the contract of lease of a dwelling, the right to take occupancy of the dwelling shall be enjoyed by those family member of the lessee as well as former family members who are indicated in the contract. In the event of those persons failing to take occupancy of the dwelling within six months from the date of contract forming, they shall forfeit the right to take this occupancy.

The lessee of a state or a municipality dwelling or the members of his family of full age shall have the right upon the consent of other family members of full age to house in the dwelling the spouse (cohabitant), children, his own parents and those of his spouse. Minor children shall not need such consent for taking occupancy together with their parents. The lessee of dwellings of enterprises, offices, organizations and natural persons leased out on commercial grounds shall be able to house the persons specified in the present Paragraph exclusively with the permission of the lessor. Such permission shall not be necessary in respect of the spouse (cohabitant) of the lessee or his family member and their minor children. The contract of lease of a dwelling may establish other clauses regulating the taking of occupancy by family members.

Having taken residence, a family member shall acquire equal rights and duties with other members of the lessee or former members thereof to the dwelling unless otherwise agreed at the moment of taking occupancy.

#### *Rights and duties of the lessee's family members*

According to the Article 6.589 of the CC the family members of the lessee of a dwelling shall have the same rights and duties arising from the contract of lease of a dwelling as the lessee himself.

Upon having ceased to be members of the lessee's family while continuing to reside in the leased dwelling, natural persons shall have the same rights and duties as the lessee and his family members.

#### *Temporary dwellers*

It should be noted that Article 6.596 of the CC establishes the regulation about temporary dwellers: having agreed among themselves and having accordingly informed the lessor beforehand, the lessee and his family members may allow temporary gratuitous occupancy in the dwelling in their use to other persons (temporary dwellers) without forming a contract of sublease. Upon the demand of the lessee or his family members, temporary dwellers shall have to vacate the dwelling immediately. In the event of their refusal to vacate the dwelling, the lessee and his family members shall have the right to apply to the court for the eviction of the temporary dwellers, without another dwelling being granted to them.

The lessee shall be liable towards the lessor for the actions of temporary dwellers.

The lessor shall have the right to deny permission for the occupancy of temporary dwellers in the instances where their occupancy would violate sanitary requirements and pose threat to the health and safety of others or would infringe the lawful interests of the lessor.

Upon termination of a contract of lease of a dwelling, the temporary dwellers must vacate the dwelling (Article 6.597 of the CC).

The departing lessees of the social housing also can allow temporary dwellers (the Article 6.592 of the CC). In the event where there are no remaining lessee, members of his family or former members of the family, the departing lessee shall be able to let temporary residents take occupancy of the dwelling. Upon the return of the person who was temporarily absent, the sub-lessee or the temporary resident must immediately vacate the dwelling, and the persons who fail to vacate the dwelling concerned shall be evicted without prior notice and without another dwelling being provided. Upon the return of the person who was temporarily absent, the temporary resident must immediately vacate the dwelling, and the persons who fail to vacate the dwelling concerned shall be evicted without prior notice and without another dwelling being provided.

In the event of departure of the lessee and all of his family members, the lessee shall have the right to allow temporary dwellers to take occupancy thereof. It may be stipulated in the contract of reservation that the state or municipality shall lease the dwelling under a fixed-term contract of lease.

It should be noted that under Article 6.624 of the CC lessees who maintain occupancy in hostels shall have no right to provide occupancy for temporary dwellers.

- *Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant*

In the Lithuania there is recognized change of lessee in some cases.

In case of divorce (and equivalents such as separation of non-married couples) or in case of separation of the adult family member an adult member of the family of the lessee and a former member of the family have the right to conclude a separate contract of lease of dwelling (to divide the apartment) if the lessor, the lessee and other family members of full age do not object. Such family member, taking in regard the part of the dwelling area attributable to him may lease a separate isolated dwelling premise. In such event, separate contracts of lease of dwellings shall be concluded with every lessee. The lessee, his family members of full age or former family members may determine the order and conditions for the use of the leased dwelling without modifying the contract of lease (the Article 6.599 para 1 of the CC).

This regulation is applicable both to the dwelling lease without public task and the dwelling lease with public task if both lessees meet the requirements settled in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania and have the right to social housing.

In case of the uniting of the lessees into one family when several natural persons (lessees) maintaining occupancy of one leased dwelling under separate contracts of lease unite to make one family, they have the right to conclude one contract of lease of the leased dwellings (to join the flats) upon the consent of their family members and the lessor. The contract shall be formed with the lessee proposed by the members of the united family (the Article 6.601 para 1 of the CC).

This regulation is applicable both to the dwelling lease without public task and the dwelling lease with public task if both lessees meet the requirements settled in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania and have the right to social housing.

In case when apartments are shared among students a student moving out may be replaced by motion of the other students if this possibility is indicated in the procedure of granting a hostel dwelling which is confirmed by the decision of the managing bodies of the institutions of science and learning (the Article 6.623 para 1 of the CC).

In case of death of lessee upon the agreement between the family members of the lessee, the contract of lease of a dwelling may be changed in the event of the lessee's death where his family members continue to occupy the leased dwelling, and inform the lessor accordingly within two months after the lessee's death (Article 6.602 para 2 of the CC).

This regulation is applicable both to the dwelling lease without public task and the dwelling lease with public task if lessee's family member meet the requirements settled in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania and have the right to social housing.

In case of the transfer of a vacated dwelling in the event where in a dwelling leased by the state or municipality to several lessees under separate contracts of lease an adjacent room which is not isolated from the dwelling of one of the lessees is vacated, under the request of that lessee this room may be transferred to his use.

In the instances where an isolated room is vacated, it shall be transferred to the use of that lessee who has the least common useful space per one family member, or to another lessee in the event of a refusal by the former. In the instances of refusal by all lessees, the vacated dwelling shall be leased to other lessees. Upon the vacated room being transferred to another lessee, the contract of lease of the dwelling shall be changed (Article 6.603 of the CC).

- Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?

### **Conditions of sublease**

Under the Article 6.578 para 2 of the CC a lessee may act in the capacity of a lessor of dwellings if he forms a contract of sub-lease under the procedure established by laws.

In the case of the dwelling rent with public task the sublease is allowed. Under Articles 6.592 and 6.594 of the CC in the event where there are no remaining lessee, members of his family or former members of the family, the departing lessee shall be able to sublease the dwelling. Upon the return of the person who was temporarily absent, the sub-lessee must immediately vacate the dwelling, and the persons who fail to vacate the dwelling concerned shall be evicted without prior notice and without another dwelling being provided. In the event of departure of the lessee and all of his family members, the lessee shall have the right to permit the dwelling to be used by other persons under a contract of sub-lease. It may be stipulated in the contract of reservation that the state or municipality shall lease the dwelling under a fixed-term contract of lease.

In the case of the dwelling rent without public task, according to Articles 6.595 and 6.597 of the CC, the lessee of a dwelling upon written consent of all the family members residing together with him as well as that of the lessor shall have the right to sublease the dwelling. The contract for the sublease of a dwelling may be formed both in written and oral form, and for fixed or indeterminate term, though the duration of the contract of sublease may not be longer than the duration of the contract of lease.

The payment for the sublease of a dwelling shall be determined upon the agreement of the parties.

Upon the termination of the period of sublease, the sublessee shall have no priority for a renewal of the contract and shall have upon the demand of the lessee to vacate the premises held under the contract of lease. In the event where a contract of sublease is formed without a term being fixed, the lessee shall be obliged to notify the sublessee three months in advance about the dissolution of the contract of sublease. In the event of the refusal of the sublessee to vacate the dwelling, he shall be evicted under judicial proceedings without another dwelling being granted to him.

Upon concluding a contract of sublease, the lessee shall continue to be liable towards the lessor under the contract of lease. Upon termination of a contract of lease of a dwelling, a contract of sublease shall also terminate at the same time.

It should be noted that under Article 6.624 of the CC lessees who maintain occupancy in hostels shall have no right to sublease their dwelling.

### **Abuses in sublease**

In Lithuania there are cases when the landlord (lessor) is acting as sublessor and offers for lessee a contract of sublease instead the contract of lease, because the sublessee has less of rights than the lessee, for example, the sublease contract must terminate when lease contract is terminated, the sublessee do not have the priority for a renewal of the contract, etc., and it is favourable for the landlord.

- Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?

In the Lithuania there is no possibility to conclude a contract with a multiplicity of tenants (e.g. group of students). The dwelling lease contract is bilateral agreement so it could be only between two parties.

- Duration of contract

- Open-ended vs. limited in time contracts

- for limited in time contracts: is there a mandatory minimum or maximum duration?

According to the general rule indicated in the Article 6.479 para 1 of the CC a contract of lease may be fixed-term or concluded for an indefinite period, but in all cases the period of lease may not exceed one hundred years.

Under Article 6.582 of the CC a contract of lease of a dwelling may be formed for an indeterminate term or for a fixed term. A written contract of lease shall be deemed to be concluded from the date of its signature by the parties, while an oral contract shall become binding from the day when the parties agree on the conditions of the contract or a permission to take residence in the premises concerned is given.

There is no mandatory minimum duration for limited in time contracts, but there is mandatory maximum duration – in all cases the period of lease may not exceed one hundred years (the Article 6.479 para 1 of the CC).

It should be noted that in the case of social housing there are also contracts of indeterminate term and contracts for a fixed term. Contracts for a fixed term usually are valid until the person receives the dwelling rent for indeterminate term and concludes indeterminate contract. There is one point, that under the Article 11 para 4 of the Law on state support the tenant must every three years to declare his income and if his income exceeds the limits settled by the Government of the Republic of Lithuania the dwelling lease contract must be interrupted.



- *Other agreements on duration and their validity: “chain contracts”; prolongation option; contracts for life etc.*

A fixed-term contract, the duration of which is determined by a certain event, shall become indeterminate in the case of non-occurrence of this event. Where the date of the occurrence of the event concerned is put forward to a later time, the fixed term of the contract shall be postponed accordingly.

The parties may renew a fixed-term contract of lease of a dwelling by concluding a new contract of lease for a fixed or an indeterminate term.

- Rent payment

- *In general: freedom of contract vs. rent control*

In the Lithuania the lessor has freedom to establish rent payment, but his freedom is restricted by the laws. In the cases of commercial rent the lessor has more freedom to establish the rent payment and in the cases of social housing his right is more restricted.

Under the Article 6.583 of the CC payment of lease for the state and municipality dwellings shall be calculated in accordance with the procedure established by the Government. The same rule is indicated in the Article 10 of the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania.

The amount of lease payable for dwellings leased out on commercial grounds by enterprises, offices, organizations and legal persons shall be determined upon the agreement of the parties, though the maximum amount of the lease payment may not exceed the maximum lease payment determined in accordance with the procedure established by the Government. But it should be noted that this rule is not realized because the Government of the Republic of Lithuania has not yet adopted its resolution on the maximum amount of the commercial lease payment. So nobody does follow this rule and nobody does control the following of the rule.

Lease payment for the dwellings of enterprises, offices and organizations leased out to their employees shall be determined in the collective agreement, and in the instances where organizations do not conclude such agreements, it shall be determined by an agreement between the organization and the employee concerned, though the maximum amount of the lease payment may not exceed the maximum lease payment determined in accordance with the procedure established by the Government.

- Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent

**Rent control is legally framed** in such a way that in the laws (in the CC, in the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of the Republic of Lithuania) are settled rules that rent payment in the cases of social housing must be calculated in accordance with the procedure established by the Government and in the cases of housing rent without public task rent payment cannot exceed the maximum lease payment determined in accordance with the procedure established by the Government.

**So rent payment amount control's mechanism is applied when** persons conclude both the social housing rent contracts and the dwelling rent contracts without public task. In the cases of social housing the landlord must establish the precise rent payment according to the Government procedure and in the cases of dwelling rent without public task the landlord has right to choose the rent payment, but he is restricted because his rent payment cannot exceed the maximum lease payment determined in accordance with the procedure established by the Government.

**Rent control mechanism is carried out** by contracts parties and courts. Firstly, this mechanism is realized when the lessor establishes rent payment amount, because he must verify if his chosen rent payment's amount do not exceed the reasonable lease payment (in the case of dwelling rent without public task) or he must establish the rent payment according to the procedure established by the Government (in the social housing rent cases). Secondly, in the case of dwelling rent without public task, the lessee is realizing this control mechanism, when he negotiates the rent payment amount, because he can contest the rent payment amount, which exceed the reasonable lease payment or the maximum lease payment determined in accordance with the procedure established by the Government. The lessee who is consumer may use the special legal norms, which protect the rights of consumers.

Ultimately, the parties can apply to the courts with demand to assess the rent payment amount. The courts could decide that rent payment amount is appropriate or non-convenient and in such a way could carry out the rent payment control mechanism.

**When the parties agree on an excessive rent**, under the Article 6.223 of the CC the lessee may negotiate with lessor for change of contract condition about which establishes an excessive rent pay. If the lessor does not agree to change this condition, the lessee may apply to the court and ask to change this contract's condition.

- Maturity (fixed payment date); consequences in case of delayed payment

Under the Article 6.583 para 2 of the CC the lessee shall be obliged to effectuate the lease payment for the dwellings every month not later than by the twentieth calendar day of the following month unless other periods are provided for by the agreement of the parties. So the parties have freedom to establish rent payment day: they can establish fixed payment date or the period of payment during which the lessee must pay the rent. It should be noted that the lessor shall have no right to demand the payment of lease in advance, with the exception of the lease payment for the first month.

If the lessee delays to pay rent payment he must pay to the lessor interest indicated in the contract. It should be noted that clauses of the contract of lease of a dwelling which establish in respect of the lessee penalty in excess of real damages incurred by the lessor, or which provide the lessor with the right to demand from the lessee the payment of lease in the form of a lump sum for the whole duration of the lease in the event of the lessee's failure to make the payment on time shall be null and void (the Article 6.587 para 5 CC).

In the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, the contract of lease may be dissolved

and the persons concerned evicted from the dwelling without other dwelling being provided (Article 6.611 of the CC).

- Restrictions on: set off and retention rights; assignment of claims from rental agreements to third parties

Under the Article 6.491 of the CC the lessee shall have the right upon the written consent of the lessor obtained in advance to assign his rights and duties under the contract of lease, to pledge the right of lease or to transfer it as a property contribution or to effectuate any other encumbrance thereof unless otherwise provided for by the contract of lease.

In the event of the assignment of rights and duties of the lessee to another person shall relieve the lessee from his obligations towards the lessor resulting from the contract of lease.

According to the Article 6.492 of the CC the lessor shall be obliged to make capital repair at his own expense of the leased thing unless otherwise provided for by laws or the contract. The violation by the lessor of this duty shall vest the lessee with the right, upon obtaining the authorization of the court, to make the capital repair and to recover from the lessor the price of the repair, or to withhold it from the lease payment, or to dissolve the contract and claim damages caused by failure to perform the contract.

The lessee whose right to use the leased thing is restricted shall have the right to obtain reduction of the lease payment, to demand compensation, or to apply for the dissolution of the contract of lease.

Where necessary, the lessee may perform the inevitable repair of the thing by withholding the amount of the expenses from his payment of lease (the Article 6.493 para 4 of the CC).

*- May a rent payment be replaced by a performance in kind (e.g. reparation, renovation) not only on the basis of an agreement by the parties but also on the basis of a statutory right? May a statutory pledge (pledge attributed by the law to an undertaker with a view to ensuring his being paid, e.g. § 648 BGB) create problems in that case?*

Under the Article 6.487 of the CC **upon the agreement of the parties**, the lease payment may be established in the following forms:

- 1) in a fixed sum of money which must be paid in a lump sum or in instalments;
- 2) in a portion of the products, fruits or incomes received from the use of the leased thing;
- 3) by certain services supplied to the lessor by the lessee;
- 4) by the duty of the lessee to improve the state of the leased thing at his own expense;
- 5) by the duty of the lessee to transfer to the lessor a thing stipulated in the contract into his ownership or on lease.

The parties may agree on a combination of these forms for the determination of the amount of the lease payment or may establish another form of calculating the lease payment.

**The laws do not establish** the statutory rights to replace the rent payment and its do not establish a statutory pledge.

- Clauses on rent increase
  - Open-ended vs. limited in time contracts
  - Automatic increase clauses (e.g. 3% per year)
  - Index-oriented increase clauses

Under Article 6.583 of the CC the contract of lease of a dwelling may provide for a modification of the amount of lease payment upon the agreement of the parties, but not more often than once a year. The clauses of a contract of lease of a dwelling providing the lessor with the right to unilaterally perform modification of the lease payment or to demand such recalculation before the expiry of a twelve-month period from the date when the contract was formed or more often than once a year shall be null and void. This rule is applicable for both open-ended and limited in time contracts.

In the cases of the dwelling rent without public task there can be established automatic increase clauses and index-oriented increase clauses, but it is importantly, that amount of rent payment after these increases does not exceed the maximum amount settled by the Government. In the case of social dwelling rent the rent payment is calculated according to the procedure established by the Government and the lessors cannot increase the payment but they can at their own charge reduce the payment or exempt lessee of the payment according to the Article 10 para 2 and 3 of the Law on the state support.

- Utilities
  - *Kinds of utilities and their legal regulation (especially: does the landlord or the tenant have to conclude the contracts of supply)*

In the context of dwelling rent we could talk about the payment for cold and hot water, electric energy, gas, heating and public utilities (disposal of garbage, lifts, cleaning of premises of communal use and territory, etc.).

According to the Article 6.587 para 6 of the CC the lessor is obliged to ensure proper use of the dwelling house in which the leased dwelling is situated, to grant or to ensure that the necessary utilities specified in the lease contract are granted to the lessee for payment, guarantee the repair of the common property of an apartment house and of the devices for rendering utility services situated in the dwelling house. So the duty to conclude the contracts of supply falls on the landlord.

- *Distribution:*

- Which utilities may be charged from the tenant?

According to the regulation of the CC the tenant is charged from paying for these utilities: cold and hot water, electric energy, gas, heating and public utilities (disposal of garbage lifts, cleaning of premises of communal use and territory, etc.).

Under Article 6.584 of the CC in the event of lease of state or municipality dwellings, payment for cold and hot water, electric energy, gas, heating and public utilities (disposal of garbage, lifts, cleaning of premises of communal use and territory, etc.) shall be effectuated separately from the payment of lease. Payment for cold and hot water, electric energy, gas, heating and public utilities shall be executed in accordance with the procedure established by the Government within the period of the rent payment.

It should be noted that the Supreme Court of Lithuania in its practice established the rule that a participant of the heat purchase legal relationship is the dwelling owner, the Municipality, irrespective of the fact that the dwelling is used by the another person (the tenant). Because the Municipality entering in apartment lease contract did not agree with the tenant who of them will become a contracting party of the heat purchase contract and the third party did not make the heat energy purchase and sale agreement, the Municipality is recognized as a party of the heat purchase contract. It should be noted that in the absence of a written contract with the heat provider for the municipality-owned apartment, it will be presumed that the heat purchase-sale contract tacitly is concluded under standard conditions between the supplier and the owner of the apartment – the Municipality<sup>187</sup>. In executing the part of its social policy function – in renting social housing –the Municipality is responsible for the proper execution of the function and has no reason to unilateral move the risk a of the person's, to whom it must provide social housing, insolvency on the operators, supplying heat to the municipality-owned dwellings<sup>188</sup>.

So in the practice it could be that the lessor (the Municipality) must pay for the utilities. Payment for the public utilities and the amounts, periods and procedure of payment thereof in the event of lease of dwellings by legal persons to their employees shall be determined within the framework of the collective agreement, and in the instances where organizations do not conclude such agreements, it shall be determined by an agreement between the administration and the employee concerned.

In the event of lease of dwellings by legal and natural persons on commercial grounds, the issues of payment for cold and hot water, electric energy, gas, heating and public utilities shall be determined upon the agreement of the parties.

- What is the standing practice?
  - Increase of prices for utilities
  - Disruption of supply

As the tenant has a duty to pay for utilities, in the case of increase of prices for utilities the tenant must pay the increased price.

As the lessor has a duty to conclude the contracts of supply, in the case of -disruption of supply he has duty to carry of restoring of supply.

- Deposit:

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<sup>187</sup>Decision of the Supreme Court of Lithuania in the civil case No. 3K-3-280/2009 (9 July 2009).

<sup>188</sup>Decision of the Supreme Court of Lithuania in the civil case No. 3K-3-3/2008 (30 January 2008).

- What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?

The legal concept of the deposit is indicated in the Article 6.583 para 5 of the CC: the lessor shall have no right to demand the payment of lease in advance, with the exception of the lease payment for the first month. So the deposit is an advance rent payment, which amount does the law limit. This rule is also applicable in the case of the social house rent because the special law (the Law on the state support) does not provide any other clause than this rule of the CC.

- *What is the usual and lawful amount of a deposit?*

Under the Article 6.583 para 5 of the CC the amount of a deposit is amount of the rent payment for one month. The clause of the contract for more than one month deposit payment will be null, but the contract itself will be valid.

- *How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)*

There are no special requirements for the landlord actions in managing the deposit.

- *What are the allowed uses of the deposit by the landlord?*

There are no special requirements for allowed uses of the deposit by the landlord.

- Practice and legal limitations

It should be noted that the Supreme Court of Lithuania, which forms the legal practice obligatory for all courts of the Republic of Lithuania, did not pronounce about the deposit or its amount in the case of dwelling rent.

- Repairs

- *Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)*

Under Article 6.492 of the CC the lessor shall be obliged to make capital repair at his own expense of the leased thing unless otherwise provided for by laws or the contract.

Violation by the lessor of the duty provided for this Article para 1 shall vest the lessee with the right, upon obtaining the authorization of the court, to make the capital repair and to recover from the lessor the price of the repair, or to withhold it from the lease payment, or to dissolve the contract and claim damages caused by failure to perform the contract. In this event the lessee shall be bound to submit to the lessor the estimate and account of the work of capital repair.

The lessee shall be obliged to provide for all the conditions necessary for the proper performance of the duty of the lessor indicated in this Article para 1.

In the performance of his duty indicated in this Article para 1, the lessor shall have the right to require from the lessee to temporarily desist from the use of the leased thing if the capital repair is necessary and urgent. If the capital repair is not urgent and the lessee does not agree to be temporarily dispossessed of the leased thing, the lessor

must obtain the authorization of the court for the temporary restriction of the lessee's right to use the leased thing.

The lessee whose right to use the leased thing is restricted shall have the right to obtain reduction of the lease payment, to demand compensation, or to apply for the dissolution of the contract of lease. It should be noted that according to Article 6.493 of the CC the lessee shall be obliged to maintain the leased thing in a proper state and to bear expenses for the maintenance of this thing and to make its current repair at his own expense unless otherwise provided for by laws or the contract.

The lessee, on becoming aware of damage or any other serious defects of the leased thing for the elimination of which urgent capital repair is necessary, shall be bound immediately to inform the lessor thereof.

In the event where the lessor, after he was informed by the lessee, fails to eliminate the defects, the lessee shall have the right to undertake the necessary repair work even without the authorization of the court if it is necessary to ensure the preservation of the leased thing; in doing so the lessee shall inform the lessor accordingly and subsequently submit to him the document confirming the value of the performed work as well as the replaced parts of the thing. Where necessary, the lessee may perform the inevitable repair of the thing by withholding the amount of the expenses from his payment of lease.

Article 6.501 of the CC regulates the situation of improvement of the thing. In the instances where the lessee with the permission of the lessor has made improvements of the leased thing, he shall have the right to compensation of the necessary expenses incurred by him for that purpose.

In the event where the improvements made by the lessee without the permission of the lessor are separable without harm to the leased thing, and where the lessor does not agree to compensate for them, they may be taken out by the lessee.

The value of improvements which are not separable without harm to the leased thing made by the lessee without the permission of the lessor shall not be subject to obligatory compensation.

Article 6.502 of the CC regulates the liability of a lessee for loss of a thing. The lessee shall be liable for the loss of a thing unless he proves that the loss was not due to his fault or that of the persons he, upon the permission of the lessor, granted the right of use of the leased thing or allowed access thereto.

The lessee shall not be liable for the loss of an immovable thing by the reason of fire unless it is proved that the fire occurred due to his fault or that of the persons he, upon the permission of the lessor, granted the right of use of the leased thing or allowed access thereto.

In the Law on the state support there are no special provisions on repair so in the case of social housing the CC provisions are applicable.

- Connections of the contract to third parties
  - *Rights of tenants in relation to a mortgagee (before and after foreclosure)*

According to the Article 6.486 of the CC a lease of a thing shall not terminate nor change the rights of third persons to that thing.

The lessor before concluding a contract of lease shall be obliged to inform the lessee about all rights of third persons to the thing upon lease (pledge, servitude, usufruct, etc.). If the lessor fails to perform this duty, the lessee shall have the right to demand a reduction of lease payment or dissolution of the contract and compensation of damages.

In the Law on the state support there are no special provisions on repair so in the case of social housing the CC provisions are applicable.

- Penalties

The lease agreement could be ensured through some penalties: contractual liability is a pecuniary obligation resulting from a failure to perform a contract or from its improper performance where one party of the obligation has the right to claim for compensation of damages or demand to pay penalty (fine, interest), and the other party is bound to make compensation for damages, or to pay penalty (fine, interest) caused by the failure to perform the contract, or by a improper performance thereof (Article 6.245 of the CC).



**Contents of tenancy contracts**

	Dwelling rent without public task	Dwelling rent with public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Description of dwelling	A contract of lease of a dwelling shall include the following data: the address of the leased premises, number of rooms or any other premises, dwelling space, engineering (technical) installations present in the premises, the appurtenances and the conditions for the use of common premises, amount of the lease payment and periods for this payment, procedure for the payment for public utilities.	There are special provisions settled in the Law on the state support on useful area amount for one family member.	1. Dwelling rent with public task 2. Dwelling rent without public task
Residence contracts and mixed (residence/commercial) contracts	The mixed residence/commercial contracts of dwelling lease are not allowed	The mixed residence/commercial contracts of social dwelling lease are not allowed	The same regulation
Landlord	The lessor is the owner of the dwellings or the possessor thereof upon any other legal grounds.	The landlord can be only the Municipality which is the owner of the dwelling.	1. Dwelling rent with public task 2. Dwelling rent without public task

Tenant	A lessee can be a natural person who concludes a contract of lease of a dwelling in his own name and in his own interests, or those of his family, or the former members of his family. In the event where a minor who does not have parents or cannot live with them remains residing in the dwelling, a contract of lease of the dwellings in his name may be formed by a person authorized by laws.	The tenant (only a natural person) must met special personal and financial requirements settled in the Law on the state support	1. Dwelling rent with public task 2. Dwelling rent without public task
Members of the lessee's family	<p>Members of the lessee's family are allowed to move in an apartment together with the lessee.</p> <p>The number of persons residing in a dwelling shall be limited by the necessity to ensure normal sanitary conditions and availability of normal conveniences for each of them.</p> <p>The family members of the lessee of a dwelling shall have the same rights and duties arising from the contract of lease of a dwelling as the lessee himself.</p>	<p>Members of the lessee's family are allowed to move in an apartment together with the lessee.</p> <p>The number of persons residing in a dwelling shall be limited by the necessity to ensure normal sanitary conditions and availability of normal conveniences for each of them.</p> <p>The family members of the lessee of a dwelling shall have the same rights and duties arising from the contract of lease of a dwelling as the lessee himself.</p>	The same regulation

Changes of parties	<p>In the event of the right of ownership to a dwelling having passed from the lessor to another person, the contract of lease of a dwelling shall remain valid in respect of the new owner, providing the contract of lease of a dwelling was registered in the Public Register within the procedure established by laws.</p> <p>In the Lithuania there is recognized change of lessee in some cases:</p> <p>(i) in case of divorce (and equivalents such as separation of non-married and same sex couples) or in case of separation of the adult family member;</p> <p>(ii) in case of the uniting of the lessees into one family;</p> <p>(iii) in case of death of lessee.</p>	<p>In the event of the right of ownership to a dwelling having passed from the lessor to another person, the contract of lease of a dwelling shall remain valid in respect of the new owner, providing the contract of lease of a dwelling was registered in the Public Register within the procedure established by laws.</p> <p>In the Lithuania there is recognized change of lessee in some cases:</p> <p>(i) in case of divorce (and equivalents such as separation of non-married and same sex couples) or in case of separation of the adult family member (this regulation is applicable both to the dwelling lease without public task and the dwelling lease with public task if both lessees meet the requirements settled in the Law on the state support the and have the right to social housing.);</p> <p>(ii) in case of the uniting of the lessees into one family (this regulation is applicable both to the</p>	<p>1. Dwelling rent with public task</p> <p>2. Dwelling rent without public task</p>
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		<p>dwelling lease without public task and the dwelling lease with public task if both lessees meet the requirements settled in the Law on the state support and have the right to social housing.);</p> <p>(iii) in case of death of lessee</p> <p>this regulation is applicable both to the dwelling lease without public task and the dwelling lease with public task if lessee's family member meet the requirements settled in the Law on the state support and have the right to social housing.;</p> <p>(iv) in case of the transfer of a vacated dwelling.</p>	
Subletting	A lessee may act in the capacity of a lessor of dwellings if he forms a contract of sub-lease under the procedure established by laws.	In the event where there is no remaining lessee, members of his family or former members of the family, the departing lessee shall be able to sublease the dwelling.	<p>1. Dwelling rent with public task</p> <p>2. Dwelling rent without public task</p>
A multiplicity of tenants	There is no possibility to conclude a contract with a multiplicity of tenants	There is no possibility to conclude a contract with a multiplicity of tenants	The same regulation
Duration of contract	There are also contracts of indeterminate term	There are also contracts of indeterminate term	1. Dwelling rent with

	and contracts for a fixed term	and contracts for a fixed term  The tenant must every three years to declare his income and if his income exceeds the limits settled by the Government of the Republic of Lithuania the dwelling lease contract must be interrupted.	public task 2. Dwelling rent without public task
Rent payment	The amount of lease payable for dwellings leased out on commercial grounds by enterprises, offices, organizations and legal persons shall be determined upon the agreement of the parties, though the maximum amount of the lease payment may not exceed the maximum lease payment determined in accordance with the procedure established by the Government.	The payment of lease for the state and municipality dwellings shall be calculated in accordance with the procedure established by the Government.	1. Dwelling rent with public task 2. Dwelling rent without public task
Clauses on rent increase	There can be established automatic increase clauses and index-oriented increase clauses, but it is importantly, that amount of rent payment after these increases does not exceed the maximum amount settled by the Government.	The rent payment is calculated according to the procedure established by the Government and the lessors cannot increase the payment but they can at their own charge reduce the payment or exempt lessee of the payment.	1. Dwelling rent with public task 2. Dwelling rent without public task

Utilities	<p>The duty to conclude the contracts of supply falls on the lessor.</p> <p>The tenant is charged from paying for these utilities: cold and hot water, electric energy, gas, heating and public utilities (disposal of garbage lifts, cleaning of premises of communal use and territory, etc.).</p>	<p>The duty to conclude the contracts of supply falls on the lessor.</p> <p>The tenant is charged from paying for these utilities: cold and hot water, electric energy, gas, heating and public utilities (disposal of garbage lifts, cleaning of premises of communal use and territory, etc.).</p> <p>According to the practice of the Supreme Court of Lithuania the Municipality as a dwelling owner must pay for the utilities if the tenant does not pay for it.</p>	The same regulation
Deposit	<p>The legal concept of the deposit is indicated in the Part 5 of the Article 6.583 of the CC: the lessor shall have no right to demand the payment of lease in advance, with the exception of the lease payment for the first month. So the deposit is an advance rent payment, which amount is limited by the law.</p>	<p>The legal concept of the deposit is indicated in the Part 5 of the Article 6.583 of the CC: the lessor shall have no right to demand the payment of lease in advance, with the exception of the lease payment for the first month. So the deposit is an advance rent payment, which amount is limited by the law.</p>	The same regulation
Repairs	<p>The lessor shall be obliged to make capital repair at his own expense of the</p>	<p>The lessor shall be obliged to make capital repair at his own expense of the</p>	The same regulation

	<p>leased thing unless otherwise provided for by laws or the contract.</p> <p>The lessee shall be obliged to provide for all the conditions necessary for the proper performance of this duty of the lessor.</p>	<p>leased thing unless otherwise provided for by laws or the contract.</p> <p>The lessee shall be obliged to provide for all the conditions necessary for the proper performance of this duty of the lessor.</p>	
Connections of the contract to third parties	<p>A lease of a thing shall not terminate nor change the rights of third persons to that thing.</p> <p>The lessor before concluding a contract of lease shall be obliged to inform the lessee about all rights of third persons to the thing upon lease (pledge, servitude, usufruct, etc.). If the lessor fails to perform this duty, the lessee shall have the right to demand a reduction of lease payment or dissolution of the contract and compensation of damages.</p>	<p>A lease of a thing shall not terminate nor change the rights of third persons to that thing.</p> <p>The lessor before concluding a contract of lease shall be obliged to inform the lessee about all rights of third persons to the thing upon lease (pledge, servitude, usufruct, etc.). If the lessor fails to perform this duty, the lessee shall have the right to demand a reduction of lease payment or dissolution of the contract and compensation of damages.</p>	The same regulation

## 6.5. Implementation of tenancy contracts

- **Disruptions of performance (in particular “breach of contract”) prior to the handover of the dwelling**

- In the sphere of the landlord:

- Delayed completion of dwelling
- Refusal of handover by landlord (in particular: case of “double lease” in which the landlord has concluded two valid contracts with different tenants)
- Refusal of clearing and handover by previous tenant
- Public law impediments to handover to the tenant

In the process of the handover of the dwelling the landlord has two duties:

- (i) to transfer the dwelling to the lessor in agreed time

The Article 6.484 of the CC establishes consequences of non-delivering the thing to the lessee: in the event of the failure of the lessor to deliver into the use of the lessee the leased thing, its documents and appurtenances, the lessee shall have the right to recover this thing from the lessor and to claim damages caused by the delay of performance or to demand dissolution of the contract and compensation of damages caused by the non-performance of the contract.

The same provisions are applicable in the case of the social housing rent.

- (ii) to transfer the fit for residence vacant dwelling

The lessor shall be obliged to transfer to the lessee the fit for residence vacant dwelling specified in the contract of lease of a dwelling. The premise shall be deemed not fit for residence if it is in such a state that residing therein would pose danger to the health or safety of the lessee or that of his family members, or to the safety and health of the society (Article 6.587 of the CC).

At the time of concluding a contract of lease of a dwelling, the lessor shall be obliged to submit to the lessee a copy of the by-laws of the dwelling-house condominium or any other document establishing the requirements for the care, use and maintenance of common premises and other rules. A copy of this document shall be an inherent part of a contract of lease of a dwelling. Nevertheless, a lessee shall have no right to demand dissolution of the contract of lease of a dwelling solely on the grounds of the lessor's failure to furnish him with a copy of this document (Article 6.580 of the CC).

The same provisions are applicable in the case of the social housing rent.

**If the landlord delays completion of dwelling**, the lessee has the right to recover the dwelling from the lessor and to claim damages caused by the delay of completion or to demand dissolution of the contract and compensation of damages caused by the non-performance of the contract.

The same provisions are applicable in the case of the social housing rent.



**If the landlord refuses of handover of the dwelling**, the lessee has the right to recover the dwelling from the lessor and to claim damages caused by the delay of performance or to demand dissolution of the contract and compensation of damages caused by the non-performance of the contract.

The same provisions are applicable in the case of the social housing rent.

**In the case of “double lease” in which the landlord has concluded two valid contracts with different tenants and the handover of the dwelling for the tenant who has concluded the rent contract later is impossible**, the tenant who has concluded the rent contract later has right to demand the compensation of damages caused by the non-performance of the contract.

The same provisions are applicable in the case of the social housing rent.

**If previous tenant refuses of clearing and to handover the dwelling** the tenant shall be evicted under judicial proceedings without another dwelling being granted to him, i. e. the landlord must apply to the court for tenant's eviction. The posterior tenant has right to demand the compensation of damages caused by the non-performance of the contract from the landlord. The landlord can exact these damages from the previous tenant who refused timely of clearing the dwelling.

Under the Article 6.613 of the CC upon the expiration of the time-limit of a contract of lease of a dwelling, the lessee, his family members or former family members must vacate the dwelling upon the demand of the lessor, while those who fail to comply shall be evicted without another dwelling being provided.

According to the Article 6.614 of the CC a contract of lease of a dwelling of indeterminate term in respect of premises leased by legal and natural persons on commercial grounds may be dissolved upon the demand of the lessor with a written warning issued to the lessee six months in advance. Upon the expiration of the time-limit of six months, the lessee, his family members or former family members must vacate the dwelling, while those who fail to comply shall be evicted without another dwelling being provided.

The same provisions are applicable in the case of the social housing rent.

In Lithuania there are no special **public law impediments to handover to the tenant**. But there are some public law impediments which could be related to the handover to the tenant. These public law impediments are settled in the Criminal Code of the Republic of Lithuania and in the Administrative Offences Code of the Republic of Lithuania. In Lithuania the public law can provide the cases when the transmission of the dwelling is not allowed, for example, when the dwelling is recognized as collapsing<sup>189</sup>, when the dwelling is under arrest<sup>190</sup>, etc.

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<sup>189</sup> The Administrative Offences Code of the Republic of Lithuania (amended and supplemented), Official Journal, 1985, No. 1-1.

<sup>190</sup> The Criminal Code of the Republic of Lithuania (amended and supplemented), Official Journal, 2000, No. 89-2741.

However the dwelling rent relationships are civil relationships and there we must apply the civil liability, which is fixed in civil laws.

*The Criminal Code of the Republic of Lithuania*

The Article 165 of the Criminal Code of the Republic of Lithuania establishes criminal liability for unlawful violation of inviolability of a person's dwelling: a person who unlawfully, in a secret or open manner by resorting to deceit or violence or otherwise against the will of an owner or the persons authorized by him, intrudes into another person's residential house, apartment or other residential premises or fixtures thereof, including the dwelling's guarded territory, be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two year. A person shall be held liable for an act provided for in this Article only subject to a complaint filed by the victim or a statement by his authorized representative or at the prosecutor's request.

The Article 182 of the Criminal Code of the Republic of Lithuania establishes criminal liability for swindling: a person who, by deceit, acquires another's property for own benefit or for the benefit of other persons or acquires a property right, avoids a property obligation or annuls it shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years. A person who, by deceit and for own benefit or for the benefit of other persons, acquires another's property of a high value or a property right or the valuables of a considerable scientific, historical or cultural significance or avoids a property obligation of a high value or annuls it or swindles by participating in an organized group shall be punished by imprisonment for a term of up to eight years.

There is no practice that in the dispute, when is violated the handover to the tenant, were applied these Article of the Criminal Code of the Republic of Lithuania.

*The Administrative Offences Code of the Republic of Lithuania*

The administrative liability settled in this Code is related with social housing.

The Article 156 of the Administrative Offences Code of the Republic of Lithuania establishes the administrative liability of the professionals who infringe the person's right to the State's support to the housing: they receive the notice or the fine from 200 to 500 litas.

The Article 157 of the Administrative Offences Code of the Republic of Lithuania establishes the administrative liability of the professionals who infringe the terms of the settlement in the dwelling: they receive the notice or the fine of 500 litas.

- In the sphere of the tenant: refusal of handover by tenant; insolvency of tenant

**The refusal of handover by tenant** could be understood in two ways: (i) if the tenant refuses to vacate the dwelling after the end of the lease contract, he is evicted under judicial proceedings; (ii) if the tenant after the conclusion of the rent contract refuses to move in into the dwelling, he must compensate damages to landlord caused by the non-performance of the contract.

Under the Article 6.611 of the CC **in the case of insolvency of tenant** in the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided.

The same provisions are applicable in the case of the social housing rent.

- **Disruptions of performance (in particular “breach of contract”) after the handover of the dwelling**
- Defects of the dwelling
  - *Notion of defects: is there a general definition?*
  - *Examples: is the exposition to noise e.g. from a building site in front of the house or are noisy neighbors a defect? Damages caused by a party or third persons? Occupation by third parties?*

There is no one exact **definition of “defects of the dwelling”**, but this notion is clear from the systemic analysis of laws.

Under Article 6.581 of the CC the subject matter of the dwelling rent contract can be only a fit for residence dwelling. According to the order of the Minister of Environment of the Republic of Lithuania No. 705 on the approval of the Construction Technical Regulation STR 2.02.01:2004 “Dwellings” a fit for residence is a dwelling which is fit to live for one person or family and corresponds to the construction’s and special rules (rules of hygiene, rules of fire safety, etc.) and which has a useful area for one family member bigger than 14 square meters (this rule is not applicable for the social housing dwellings). So the dwelling which does not meet the requirements settled in the Civil Code and the order of the Minister of Environment of the Republic of Lithuania No. 705 on the approval of the Construction Technical Regulation STR 2.02.01:2004 “Dwellings” has defects.

The types of possible dwelling’s defects are indicated in the order of the Minister of Environment of the Republic of Lithuania No. 351 on the approval of the Construction Technical Regulation STR 1.12.05:2002 „Mandatory requirements of dwelling use and care”. According to this order the dwelling must maintain these requirements:

- mechanical resistance and stability;
- fire safety;
- hygiene, health and the environment;
- safe use;
- protection against noise;
- energy-saving and heat preservation;
- use of premises fit for purpose, registered with the Real Estate Cadastre;

- to maintain an aesthetically pleasing home environment and its appearance;
- do not disturb the living and operating conditions of third parties.

If the dwelling does not correspond to these requirements it can be stated that the dwelling has appropriate defects.

The same provisions are applicable in the case of the social housing rent.

- Discuss the possible legal consequences: rent reduction; damages; “right to cure” (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies

The CC indicates **the possible legal consequences of dwelling’s defects**: the alternative deficiencies of the violated tenant’s rights.

The Article 6.485 of the CC establishes the liability of lessor for defects of the thing: the lessor shall be liable for defects of the thing leased out which wholly or partially obstruct the use thereof for its designation even in those instances where the lessor was not aware of those defects at the time of concluding the contract. The lessor shall not be liable for those defects of the leased thing which were stipulated by him when concluding the contract or which should have been known to the lessee, or which should have been noticed by the lessee without any additional inspection when concluding the contract or delivering the thing, but which were not discovered through his own gross negligence.

In the event of discovery of such defects, the lessee shall have the right at his choice:

- 1) demand from the lessor either elimination of those defects without compensation or a commensurate reduction of the lease payment, or compensation of the expenses of the lessee incurred in the elimination of the defects;
- 2) withhold the amount of expenses incurred for the elimination of defects from the lease payment if the lessor was informed of this in advance;
- 3) demand the dissolution of the contract before time.

The lessor who is informed about the demands of the lessee or about the latter’s intention to eliminate the defects of the thing at the expense of the lessor shall have the right to replace the leased thing of inferior quality with another analogous thing of proper quality or to eliminate the defects of the thing himself without compensation.

In the event where after the satisfaction of the demands of the lessee or after the withholding of expenses for the elimination of defects from the lease payment damages caused to the lessee are not fully compensated, he shall have the right to demand the reparation of the uncompensated part of the damages.

Under Article 6.498 of the CC the lessee shall have the right to bring an action to a court for dissolution of a contract of lease before time, if the thing transferred has defects which were not stipulated by the lessor and were unknown to the lessee and which

render the thing impossible to be used in accordance with its designation and the conditions of the contract. Also it should be noted that the tenant is lawful possessor of the dwelling so according to the Article 4.98 of the CC he has the right to claim negatory claim if third persons impede the possession of the dwelling.

The same provisions are applicable in the case of the social housing rent.

- **Implementation of (unilateral) rent increases**
  - Ordinary rent increases to compensate inflation/ increase gains

There are recognized **ordinary rent increases to compensate inflation/ increase gains** but there are also some restrictions. According to the Part 6 of the Article 6.583 of the CC the contract of lease of a dwelling may provide for a modification of the amount of lease payment upon the agreement of the parties, but not more often than once a year. The clauses of a contract of lease of a dwelling providing the lessor with the right to unilaterally perform modification of the lease payment or to demand such recalculation before the expiry of a twelve-month period from the date when the contract was formed or more often than once a year shall be null and void.

- Rent increase after renovation or similar

The **rent increase after renovation or similar** is legally, but according to the Part 6 of the Article 6.583 of the CC the rent payment modification cannot be more frequent than once a year.

- Rent increases in “houses with public task”

In the case of housing rent with public task the lessor cannot unilaterally to increase the rent payment because the rent payment for social housing calculation's procedure is established by the Resolution No. 475 of the Government of the Republic of Lithuania on the approval of States and Municipalities dwelling's rent payment's calculation<sup>191</sup>. The lessor can increase the rent payment only in such case if the Government's Resolution was changed and according to the new procedure of the rent payment calculation the rent payment is increased.

- Procedure to be followed for rent increases
  - Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel)?

According to the Article 6.583 para 6 of the CC the contract of lease of a dwelling may provide for a modification of the amount of lease payment upon the agreement of the parties. There are no special legal provisions about orientation at the rent market. It should be noted that one similar legal provision is indicated in the Article 6.198 para 1 of the CC: where a contract does not fix the price or establish an order for determining the

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<sup>191</sup> Resolution No. 475 of the Government of the Republic of Lithuania on the approval of State's and Municipalities dwelling's rent payment's calculation (25 April 2001). Official Journal, 2011, No. 105-4915.

price, the parties shall be considered, in the absence of any indication to the contrary, to have made reference to the price commonly charged at the moment of the conclusion of the contract for such performance in comparable circumstances in the sphere of business concerned, or if such price does not exist, to a reasonable price. So the rent contract parties in the case of the rent payment increase must consider the rent payment amounts for the similar dwellings. The market rent is measured/calculated according to the data settled in the others dwelling rent commercials, the data provided by the real estate agencies in their sites.

- Possible objections of the tenant against the rent increase

According to the Article 6.583 para 6 of the CC the clauses of a contract of lease of a dwelling providing the lessor with the right to unilaterally perform modification of the lease payment or to demand such recalculation before the expiry of a twelve-month period from the date when the contract was formed or more often than once a year shall be null and void. So the tenant can disagree with rent increase if it is more frequent than once a year or he can argue that increased rent payment will be contradictory to the price commonly charged of the contract for such performance in comparable circumstances in the sphere of business concerned or to a reasonable price.

- **Improvements/changes of the dwelling**
  - Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?

Under the Article 6.605 of the CC the lessee of a dwelling of state, municipalities and legal persons and his family members may modify and change the plan of the dwelling and non-residential premises only upon written permission of the lessor and the consent of the family members of full age residing together, likewise upon that of any other interested persons whose rights and lawful interests may be violated in the course of executing modification and change of plan of the dwelling and non-residential premises. In the event of disagreement between the lessee, his family members and other interested persons, the dispute may be resolved within judicial proceedings.

This provision shall not apply in the instances of current repair of the dwelling, which must be performed by the lessee unless otherwise provided for by the contract.

The same provisions are applicable in the case of the social housing rent.

- Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?

According to the Article 6.501 of the CC in the instances where the lessee with the permission of the lessor has made improvements of the leased thing, he shall have the right to compensation of the necessary expenses incurred by him for that purpose.

In the event where the improvements made by the lessee without the permission of the lessor are separable without harm to the leased thing, and where the lessor does not agree to compensate for them, they may be taken out by the lessee.

The value of improvements which are not separable without harm to the leased thing made by the lessee without the permission of the lessor shall not be subject to obligatory compensation.

The same provisions are applicable in the case of the social housing rent.

- Is the tenant allowed to make other changes to the dwelling?
  - in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?
  - fixing antennas, including parabolic antennas

The tenant is allowed making other changes to the dwelling (changes needed to accommodate a handicap; fixing antennas, including parabolic antennas) if for these changes he has written permission of the lessor and the consent of the family members of full age residing together and the consent of any other interested persons whose rights and lawful interests may be violated.

The same provisions are applicable in the case of the social housing rent.

- **Alterations of the dwelling by the landlord**
  - What does the tenant have to tolerate?
  - Which procedures must be followed

Firstly, under the Article 6.489 of the CC the lessor shall have the right without interfering with rights of the lessee **to check if the lessee uses the leased thing in a proper way**. In addition, the lessor shall have the right to show the leased thing to a prospective lessee or acquirer.

Secondly, the lessee must make suitable conditions for exercise **the duty of the lessor to make capital repair of a leased thing**. According to the Article 6.492 of the CC the lessee shall be obliged to provide for all the conditions necessary for the proper performance of the duty of the lessor to make capital repair of the leased thing.

The lessee whose right to use the leased thing is restricted shall have the right to obtain reduction of the lease payment, to demand compensation, or to apply for the dissolution of the contract of lease.

In the case of the implementation of the duty of the lessor to make capital repair of a leased thing must be followed **procedures of the relocation of the lessee for the duration of capital repair and reconstruction of the dwelling** indicated in the Article 6.606 of the CC.

Upon the necessity to perform capital repair and reconstruction of the premises leased by the state, municipalities, enterprises, offices and organizations to their employees, the repair of which cannot be effectuated without vacating the premises, and in the event where the dwelling is retained after the repair, the lessor shall offer to the lessee together with his family members to temporarily take residence in another dwelling for the duration of the repair. The dwelling offered must conform to sanitary and technical requirements. In the event of the lessee's refusal to move to the dwelling offered, the lessor may demand his relocation under judicial proceedings.

In the instances where the dwelling leased might be rendered smaller or larger in area as a consequence of the capital repair or reconstruction, the lessee shall have the right

of choice whether to lease that dwelling. In the event where the lessee agrees to lease the increased or reduced dwelling after the repair or reconstruction, he shall move or be relocated to another dwelling for the duration of the repair or reconstruction in accordance with the procedure established in the law.

The contract of lease of a dwelling shall not be interrupted for the duration of the capital repair or reconstruction, though the lessee shall have the right to pay the lease payment for the temporary dwelling.

The lessee shall have the right to move back into the dwelling after the completion of the capital repair or reconstruction. In the event where the lessee refuses to lease the increased or reduced dwelling, likewise where the dwelling is not retained in the result of capital repair or reconstruction, the lessee shall be provided with another properly equipped dwelling. In the cases where the lessee refuses to move into another adequately equipped dwelling provided, the lessor shall have the right to relocate him under judicial proceedings.

Issues related with vacating for the duration of capital repair or reconstruction dwellings leased by enterprises, offices, organizations and legal persons on commercial grounds as well as other related issues should be resolved by the agreement between the lessor and the lessee. In all cases, the lessor shall be obliged to inform the lessee about the intended repair work due to which the lessee must be temporarily relocated not later than fourteen days in advance before the start of the work. In the event where the lessor lacks the possibility to temporarily relocate the lessee for the duration of the repair, he shall be obliged before the date of the relocation to pay compensation to the lessee adequate to cover the costs of temporary relocation thereof. Upon the agreement between the parties, the costs of the relocation of the lessee for the duration of the repair may be included into the future lease payment.

The same provisions are applicable in the case of the social housing rent.

- **Uses of the dwelling**
  - *Discuss allowed vs. forbidden uses such as:*
    - keeping animals; smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.
    - is there an obligation of the tenant to live in the dwelling?

In analyzing **allowed and forbidden uses of rented dwellings** in Lithuania there are few general rules:

- 1) the lessee shall be obliged to use the leased thing in accordance with the contract and designation of the thing (Article 6.489 of the CC);
- 2) the lessee shall be obliged to use the leased thing in such a way as not to hinder the use of that thing by other lawful users (Article 6.489 of the CC);
- 3) the lessee undertakes an obligation to use the premises in accordance with their designation (Article 6.576 of the CC);



- 4) neither the lessor nor the lessee may change the form and designation of the leased property during the period of the lease (the Article 6.483 para 4 of the CC);
- 5) if the lessee, his family members or other persons residing together with him use dwelling for other than its designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided. In the event where the lessee, his family members or other persons residing together with him create by their improper behavior such conditions which render it impossible for other persons who reside together or in the neighborhood to lead normal life, they may be evicted upon the request of the lessor or the latter persons without other dwelling being provided. (Article 6.611 of the CC).

So the lessee is allowed to use rented dwelling in such manners, which are in accordance with the contract and designation of the dwelling.

Usually tenants can keep pets (in accordance with the requirements of the Law on the animals care, keeping and use), can receive guests. But these tenant's actions like prostitution and commercial uses of dwelling, removing an internal wall, fixing pamphlets outside are not in accordance with the rent contract and designation of the thing, also actions and uses of dwelling which render it impossible for other persons who reside together or in the neighborhood to lead normal life are forbidden.

The same provisions are applicable in the case of the social housing rent.

There is no direct **tenant's obligation to live in the dwelling**. But this obligation can be derived from the concept of a contract of lease of a dwelling: under a contract of lease of a dwelling, the lessor shall undertake an obligation to provide for payment the lessee with dwellings for temporary possession and use for residence, while the lessee undertakes an obligation to use the premises in accordance with their designation and pay the payment of lease (Article 6.576 of the CC); social housing is granted for residence purposes (the Article 1 para 1 of the Law on state support). The lessee has a duty to pay rent, other payments.

The same provisions are applicable in the case of the social housing rent. But in these cases there are the institutes of the preservation of the right to use state or municipality dwelling upon temporary departure (Article 6.591 of the CC) and of the reservation of a state or a municipality dwelling (Article 6.593 of the CC). In these institutes there is appropriate tenant's obligation to return in the dwelling in which he did not live some time otherwise the contract must be terminated.

Upon temporary departure of the lessee, his family member or a former family member, the right to the state or municipality dwelling shall be retained for six months on condition that the lease payment and public utility services will be paid.

In the event of the lessee, a member of his family or all members of his family departing to another location or abroad for a period exceeding six months, the state or municipality dwelling leased by him may be reserved. A dwelling shall be reserved on condition that the payment of lease and for public utility services will be effectuated.

**Implementation of tenancy contracts**

	Dwelling rent without public task	Dwelling rent with public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Disruptions of performance prior to the handover of the dwelling in the sphere of the landlord	<p>In the process of the handover of the dwelling the landlord has two duties:</p> <p>(i) to transfer the dwelling to the lessor in agreed time;</p> <p>(ii) to transfer the fit for residence vacant dwelling.</p> <p><b>If the landlord delays completion of dwelling,</b> the lessee has the right to recover the dwelling from the lessor and to claim damages caused by the delay of completion or to demand dissolution of the contract and compensation of damages caused by the non-performance of the contract.</p> <p><b>If the landlord refuses of handover of the dwelling,</b> the lessee has the right to recover the dwelling from the lessor and to claim damages caused by the delay of performance or to demand dissolution of the contract and compensation of damages caused by the non-performance of the contract.</p> <p><b>In the case of “double lease” in which the landlord has concluded two valid contracts with different</b></p>	The same regulation	The same regulation

	<p><b>tenants and the handover of the dwelling for the tenant who has concluded the rent contract later is impossible</b>, the tenant who has concluded the rent contract later has right to demand the compensation of damages caused by the non-performance of the contract.</p> <p><b>If previous tenant refuses of clearing and to handover the dwelling</b> the tenant shall be evicted under judicial proceedings without another dwelling being granted to him, i. e. the landlord must apply to the court for tenant's eviction. The posterior tenant has right to demand the compensation of damages caused by the non-performance of the contract from the landlord.</p>		
<p>Disruptions of performance prior to the handover of the dwelling in the sphere of the tenant</p>	<p><b>The refusal of handover by tenant</b> could be understood in two ways: (i) if the tenant refuses to vacate the dwelling after the end of the lease contract, he is evicted under judicial proceedings; (ii) if the tenant after the conclusion of the rent contract refuses to move in into the dwelling, he must compensate damages to landlord caused by the non-performance of the contract.</p> <p><b>In the case of insolvency of tenant</b> in the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment</p>	<p>The same regulation</p>	<p>The same regulation</p>

	or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided.		
Defects of the dwelling	<b>Notion of defects:</b> <ul style="list-style-type: none"> <li>• the dwelling is not fit for residence;</li> <li>• defects of mechanical resistance and stability;</li> <li>• defects of fire safety;</li> <li>• defects of hygiene, health and the environment;</li> <li>• defects preventing safe use;</li> <li>• defects of protection against noise;</li> <li>• defects of energy-saving and heat preservation;</li> <li>• defects of use of premises fit for purpose, registered with the Real Estate Cadastre;</li> <li>• defects concerning to aesthetically pleasing home environment and its appearance;</li> <li>• Obstruction of the living and operating conditions of third</li> </ul>	The same regulation	The same regulation

	<p>parties.</p> <p>The CC indicates <b>the possible legal consequences of dwelling's defects</b>: the alternative defense manners of the violated tenant's rights.</p>		
<p>Implementation of rent (unilateral) increases</p>	<p>Rent increases to compensate inflation/increase gains, rent increase after renovation or similar are legal, but according to the the Article 6.583 para 6 of the CC the rent payment modification cannot be more frequent than once a year.</p> <p>According to the Article 6.583 para 6 of the CC the contract of lease of a dwelling may provide for a modification of the amount of lease payment upon the agreement of the parties. There are no special legal provisions about orientation at the rent market.</p>	<p>The lessor cannot unilaterally to increase the rent payment because the rent payment for social housing calculation's procedure is established by the Resolution No. 475 of the Government on the approval of States and Municipalities dwelling's rent payment's calculation. The lessor can increase the rent payment only in such case if the Government's Resolution was changed and according to the new procedure of the rent payment calculation the rent payment</p>	<p>1. Dwelling rent with public task</p> <p>2. Dwelling rent without public task</p>

		is increased.	
Improvements/changes of the dwelling	<p>The lessee of a dwelling of state, municipalities and legal persons and his family members <b>may modify and change</b> the plan of the dwelling and non-residential premises only upon written permission of the lessor and the consent of the family members of full age residing together, likewise upon that of any other interested persons whose rights and lawful interests may be violated in the course of executing modification and change of plan of the dwelling and non-residential premises. In the event of disagreement between the lessee, his family members and other interested persons, the dispute may be resolved within judicial proceedings.</p> <p>Where the lessee with the permission of the lessor has made improvements of the leased thing, he shall have <b>the right to compensation</b> of the necessary expenses incurred by him for that purpose.</p>	The same regulation	The same regulation
Alterations of the dwelling by the landlord	<p><b>The lessor shall have the right:</b></p> <p>(i) without interfering with rights of the lessee to check if the lessee uses the leased thing in a proper way;</p> <p>(ii) to show the leased thing to a prospective lessee or acquirer;</p> <p>(iii) to make capital repair of</p>	The same regulation	The same regulation

	<p>the leased dwelling.</p> <p>In the case of the implementation of the duty of the lessor to make capital repair of a leased thing must be followed <b>procedures of the relocation of the lessee for the duration of capital repair and reconstruction of the dwelling.</b></p>		
Uses of the dwelling	<p>The lessee is allowed <b>to use rented dwelling in such manners, which are in accordance with the contract and designation of the dwelling.</b></p> <p>There is no direct <b>tenant's obligation to live in the dwelling.</b> But this obligation can be derived from the concept of a contract of lease of a dwelling.</p>	The same regulation	The same regulation

## 6.6. Termination of tenancy contracts

- **Mutual termination agreements**

According to the Article 6.156 of the CC parties can terminate their dwelling rent contract **by mutual agreement** if such clause is established in the contract. From general principles of the contract law, such as the principle of freedom of contract and reasonableness, it could be derived, that the dwelling rent contract could be terminated by mutual agreement of parties although there is no of such clause about mutual termination in the contract itself.

Under the Article 6.217 para 5 of the CC a contract may be dissolved **unilaterally** in the cases indicated therein.

- **Notice by the tenant**

- *Periods and deadlines to be respected*

The lessee of a dwelling has the right to dissolve the contract of lease by warning the lessor in writing a month in advance (Article 6.609 of the CC).

- May the tenant terminate the agreement before the agreed date of termination (especially in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?

Under Article 6.496 of the CC a contract of lease with a fixed term shall be terminated upon expiry of its timelimit unless the parties renew it by entering into a new agreement.

According to the Article 6.498 of the CC the lessee has the right to bring an action to a court for dissolution of a contract of lease before time, if:

- 1) the lessor fails to carry out the repair he is obliged to;
- 2) the thing by virtue of circumstances for which the lessee is not liable becomes not fit for use;
- 3) the lessor fails to transfer the thing to the lessee or hinders the use of the thing in accordance with its designation and the conditions of the contract;
- 4) the thing transferred has defects which were not stipulated by the lessor and were unknown to the lessee and which render the thing impossible to be used in accordance with its designation and the conditions of the contract;
- 5) there exist other grounds provided for by the contract of lease.

According to the Article 6.609 of the CC the lessee of a dwelling has the right to dissolve the contract of lease by warning the lessor in writing a month in advance. In the event of failure by the lessee to comply with this requirement, the lessor shall have the right to compensation of damages caused.

The lessee shall be able to revoke his warning before the expiration of its timelimit if the lessor has not concluded a contract of lease of that dwelling with another lessee.

Upon receiving the lessee's warning in respect of the dissolution of the contract, the lessor shall have the right to inspect the condition of the dwelling premises upon having informed the lessee beforehand about the date and time of such inspection. In this event, the lessor shall also have the right to show the premise to a prospective lessee upon having informed the lessee beforehand about the date and time of such visit. Except in urgent cases, the lessor shall have no right to inspect the dwelling premise or show it to a prospective lessee in the hours between 9 o'clock p.m. and 9 o'clock a.m.

- *Are there preconditions such as proposing another tenant to the landlord?*

There are no preconditions to the implementation of the lessee's right to terminate the contract. But it should be noted that the previous tenant in proposing the new tenant can avoid the claim on no-received lessor's income if the previous tenant interrupted the timelimited dwelling's rent contract before the time without any legal grounds.

- **Notice by the landlord**

- *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; definition of ordinary vs. extraordinary (generally available in cases of massive rent arrears or strong antisocial behaviour)*



According to the Article 6.497 of the CC the lessor shall have the right to bring an action into a court for the dissolution of a contract of lease before time, if:

- 1) the lessee uses the thing in violation of the contract or not according to the designation of the thing;
- 2) the lessee intentionally or through negligence worsens the state of the thing;
- 3) the lessee fails to pay the payment of lease;
- 4) the lessee fails to perform capital repair in those cases where the laws or the contract obligate him to do so;
- 5) there exist other grounds provided for by the contract of lease.

The lessor shall have the right to demand dissolution of the contract of lease before time only after having sent a written warning to the lessee about the necessity to perform the obligation or eliminate violations within reasonable time. However the lessee after reception of such warning failed within reasonable time to perform the obligation or to eliminate the violations.

A contract of lease of a dwelling of indeterminate term in respect of premises leased by legal and natural persons on commercial grounds may be dissolved upon the demand of the lessor with a written warning issued to the lessee six months in advance (Article 6.614 of the CC).

In the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided. In the event where the lessee, his family members or other persons residing together with him create by their improper behaviour such conditions which render it impossible for other persons who reside together or in the neighbourhood to lead normal life, they may be evicted upon the request of the lessor or the latter persons without other dwelling being provided (Article 6.611 of the CC).

- *Statutory restrictions on notice:*

- i. for specific types of dwellings, e.g. public dwellings; dwellings recently converted into apartments etc.

There are no specific statutory restrictions on notice for specific types of dwellings, e.g. public dwellings; dwellings recently converted into apartments etc. In this case there are applicable statutory restrictions on notice settled in the CC.

- ii. in favour of certain tenants (old, ill, in risk of homelessness)

There are no specific statutory restrictions on notice in favour of certain tenants (old, ill, in risk of homelessness). In this case there are applicable statutory restrictions on notice settled in the CC.

iii. for certain periods

There are no specific statutory restrictions on notice for certain periods. In this case there are applicable statutory restrictions on notice settled in the CC.

iv. after sale including public auction (“emptio non tollit locatum”), or inheritance of the dwelling

Under Article 6.494 of the CC **transfer of the right of ownership of the leased thing** from the lessor to another person, shall preserve validity of the registratable contract of lease towards the new owner and can be enforced by the new owner provided the rights resulting from such contract of lease are registered in the Public Register within the procedure established by laws. Transfer of the right of ownership to the leased property from the lessor to another person is a ground for the termination of the contract of lease in case of a demand of the lessee (the Article 6.494 para 3 of the CC).

In the event of death of a lessee of an immovable thing, his rights and duties under the contract of lease shall be passed to his heirs unless otherwise provided for by law or the contract. In such event, the lessor shall have no right to refuse the heir of the deceased lessee the assignment of the rights and duties of the previous lessee for the remaining period of the lease, except in the cases when the conclusion of the contract was conditioned by the personal qualities of the lessee (the Article 6.494 para 4 of the CC).

The contract of lease shall preserve its validity even where the thing is passed from one state (local government) institution (lessor) to another (Article 6.494 of the CC).

**In the event of expropriation** of the thing for public interests, the contract of lease shall terminate at the moment from which the new owner of the expropriated thing (possessor) acquires possession of that thing.

So there are no specific statutory restrictions on notice after sale including public auction (“emptio non tollit locatum”), or inheritance of the dwelling. In this case there are applicable statutory restrictions on notice settled in the CC.

- *Requirement of giving valid reasons for notice: admissible reasons*

The right of landlord to terminate lease contract can be realized if there are valid and admissible reasons to terminate contract. So if there are valid and admissible reasons to terminate contract the landlord's notice is valid. For example, a contract of lease of a dwelling of indeterminate term in respect of premises leased by legal and natural persons on commercial grounds may be dissolved upon the demand of the lessor with a written warning issued to the lessee six months in advance (the Article 6.614 para 1 of the CC); the lessor shall have the right to demand dissolution of the contract of lease before time only after having sent a written warning to the lessee about the necessity to perform the obligation or eliminate violations within reasonable time only if the lessee after reception of such warning failed within reasonable time to perform the obligation or to eliminate the violations (the Article 6.497 para 3 of the CC).

- *Objections by the tenant*

There is no special list of possible tenant's objections. The tenant can simply make objection on the ground that the lessor wants terminate the contract without reasons, that the lessor did not notice correctly about the termination or failed to send the notice.

For example, in the case, where the lessor brings an action into a court for the dissolution of a contract of lease before time, the tenant in the court can make objection, that he did not violate the contract, or the objection, that lessor has failed sent him a written warning about the necessity to perform the obligation or eliminate violations of contract (Article 6.497 of the CC); in the case when the lessor terminated a contract of lease of a dwelling of indeterminate term, the tenant can make objection, that the lessor did not give for him a written warning six months in advance or missed the term of warning (the Article 6.614 para 1 of the CC).

- *Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?*

There are no special provisions on "prolongation rights", i.e. the statutory right to stay for an additional period of time, to the dwelling lease. Though there are some similar rules:

- 1) in the event of a contract of lease of state or municipality dwellings being acknowledged null and void on the grounds of it having violated valid rights of other persons to that dwelling while the lessee did not know and could not have known thereof, the lessee, together with all other people residing with him, shall be evicted with another dwelling being granted to them. In other instances, the lessee shall be entitled only to compensation of damages incurred by him (the Article 6.586 para 4 of the CC);
- 2) the Article 6.591 of the CC **establishes the preservation of the right to use state or municipality dwelling upon temporary departure.**

Upon temporary departure of the lessee, his family member or a former family member, the right to the state or municipality dwelling shall be retained for six months on condition that the lease payment and public utility services will be paid.

Upon temporary departure of the lessee, his family member or a former family member, the right to the state or municipality dwelling shall be retained for the whole duration of the absence thereof in the following cases:

- upon departure to receive medical treatment: for the whole duration of the treatment;
- upon departure to study: for the whole duration of the study;
- upon departure to an extended business trip abroad: for the whole duration of the business trip;
- upon departure to take over duties of a guardian or curator: for the whole duration of this responsibility;
- in respect of children enrolled to an educational institution, or entrusted to relatives, a guardian or curator: for the whole period while the children stay in the institution or with the persons concerned;

- in respect of conscripts or persons serving in an international military unit: for the duration of the service established by laws;
- in respect of detained persons: for the whole duration of investigation and court proceedings;

Upon the expiry of these circumstances, the temporarily absent lessee, his family member or a former family member shall retain the right to the leased dwelling **for six months longer**. Upon the expiry of this period, the temporarily absent lessee, his family member or a former family member shall forfeit the right to the leased dwelling.

In the event where the having temporarily been absent member, who returns after the fixed term, is accepted by the remaining lessee, members of the family or former members of the family to take occupancy of the leased dwelling, the forfeited right to the leased dwelling shall be restored.

Upon the action of the temporarily absent person, the court may acknowledge his right to the leased dwelling if it is proved that he delayed the term-limit determined due to important reasons.

The right of a temporarily absent person to a leased dwelling shall terminate before the fixed term in the event of dissolution of the contract of lease of a dwelling unless it is otherwise provided for in the contract.

### 3) **reservation of a state or a municipality dwelling** (Article 6.593 of the CC)

In the event of the lessee, a member of his family or all members of his family departing to another location or abroad for a period exceeding six months, the state or municipality dwelling leased by him may be reserved.

A dwelling shall be reserved on condition that the payment of lease and for public utility services will be effectuated. A decision in respect of reservation shall be taken by a relevant state or municipality institution.

A refusal to execute reservation may be disputed under judicial proceedings.

The reservation of a dwelling shall be implemented in the form of a written contract between the relevant state or municipality institution and the departing persons, providing that the remaining family members give their consent thereto. The consent of the remaining persons shall be expressed in the form of their signature in the reservation contract.

A refusal to render consent may be disputed under judicial proceedings.

- Challenging the notice before court (or similar bodies)

Under the Article 6.497 of the CC **the lessor shall have the right to bring an action into a court** for the dissolution of a contract of lease before time, if:

- 1) the lessee uses the thing in violation of the contract or not according to the designation of the thing;
- 2) the lessee intentionally or through negligence worsens the state of the thing;
- 3) the lessee fails to pay the payment of lease;

- 4) the lessee fails to perform capital repair in those cases where the laws or the contract obligate him to do so;
- 5) there exist other grounds provided for by the contract of lease.

The lessor shall have the right to demand dissolution of the contract of lease before time only after having sent a written warning to the lessee about the necessity to perform the obligation or eliminate violations within reasonable time, however the lessee after reception of such warning failed within reasonable time to perform the obligation or to eliminate the violations.

According to the Article 6.498 of the CC **the lessee shall have the right to bring an action to a court** for dissolution of a contract of lease before time, if:

- 1) the lessor fails to carry out the repair he is obliged to;
- 2) the thing by virtue of circumstances for which the lessee is not liable becomes not fit for use;
- 3) the lessor fails to transfer the thing to the lessee or hinders the use of the thing in accordance with its designation and the conditions of the contract;
- 4) the thing transferred has defects which were not stipulated by the lessor and were unknown to the lessee and which render the thing impossible to be used in accordance with its designation and the conditions of the contract;
- 5) there exist other grounds provided for by the contract of lease.
  - in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law

In the CCP there are no special provisions on claims for extension of the contract or for granting of a period of grace. In these cases are applicable the general norms of eviction settled in the Articles 768 – 769 of the CCP. For example, in the Article 768 para 4 is indicated that upon presence of sound reasons, the court, public prosecutor who rendered eviction sanction as well as the senior public prosecutor may postpone eviction at a petition of persons concerned or the bailiff.

There are some indirect provisions about claims for extension of the contract or for granting of a period of grace in the case of social housing.

According to the Article 6.591 para 6 of the CC in the case of social housing rent upon the action of the temporarily absent person, the court may acknowledge his right to the leased dwelling if it is proved that he delayed the term-limit determined in this Article due to important reasons.

Under Article 6.593 of the CC the Municipality's refusal to execute reservation of the social housing may be disputed under judicial proceedings.

- **Termination for other reasons**

- Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)

The transfer of the right of ownership of the leased thing from the lessor to another person, shall preserve validity of the registratable contract of lease towards the new

owner/shall preserve the registratable contract of lease being in force towards the new owner, provided the rights resulting from that/such contract of lease are registered in the Public Register within the procedure established by laws (the Article 6.494 of the CC).

If the lease contract is not registered this contract in the case of execution proceedings against the landlord (in particular: repossession for default of mortgage payment) will be terminated.

*- Termination as a result of urban renewal or expropriation of the landlord*

Under the Article 6.615 of the CC **in the instances of dwelling premises of the state, municipalities or legal persons being brought into a condition of dilapidation or rendered unfit for habitation** due to natural disasters, fire or technical wear and tear, natural persons shall be evicted with the sanction of the public prosecutor with another adequately equipped dwelling fit for habitation being provided. The another dwelling shall be provided in the same area where the dilapidated or unfit for habitation dwelling is located. The former contract of lease shall be deemed to have terminated.

**In the event of expropriation** of the thing for public interests, the contract of lease shall terminate at the moment from which the new owner of the expropriated thing (possessor) acquires possession of that thing (the Article 6.494 para 5 of the CC).

- What are the rights of tenants in urban renewal? In particular: What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?

There are **special rules for rehousing in case of demolition of rental dwellings** settled in the Articles 6.616 – 6.617 of the CC.

Natural persons may be evicted from dwelling premises of the state, municipalities and legal persons leased to their employees with another fit for habitation dwelling being provided in the following instances:

- 1) the apartment house where the dwelling is location is subject to demolition;
- 2) the dwelling was not retained after capital repair, reconstruction or change of planning of the premises;
- 3) the dwelling premises are transformed for other designation.

Another dwelling fit for habitation shall be granted by the lessor or other legal person in whose interests the apartment house is being demolished or reconstructed and the dwelling premises are modified for another designation.

The other granted fit for habitation dwelling must be located in the same residential district and be properly equipped in accordance with the conditions of that district, it must also conform to the sanitary and technical requirements.

The other granted fit for habitation dwelling may not be of smaller area or have fewer rooms than the previously occupied dwelling. Where in the previously occupied dwelling the useful living space per one member of the family was smaller than established by laws, upon eviction the useful living space provided may not be smaller than established. The granted dwelling must be of such size as to avoid the necessity of sharing a room by two persons over nine years of age of different gender, except

spouses, and must conform to the condition of health of those to be evicted as well as to other circumstances.

Upon the request of the lessee, he may be also provided with a smaller dwelling.

The court judgment upon the dissolution of the contract of lease of dwelling and eviction of the lessee must indicate the total space and the number of rooms in the dwelling to be granted to the evicted person.

According to the Sections 4 and 5 of the Law on the state support **in the dwelling renewal case interested parties are** owners of dwelling. This law does not indicate anything about the tenants participating in the dwelling renewal process so the tenants are not recognized as interested parties in public decision-making on real estate in case of urban renewal.

It should be noted that in case of social housing rent, according to the Article 11 para 3 and 4 of the Law on the state support, the rent contract should be interrupted in the order settled in the contract when:

- (i) person or family acquire ownership rights of the dwelling;
- (ii) the tenant of the social dwelling exceeds the income limits settled by the Government, except the cases when the overrun is less the 5 percent and the tenant or his family member at the time of the data about his income submission to the Municipality is registered in the Labour Exchange or is disabled.

### Termination of tenancy contracts

	Dwelling rent without public task	Dwelling rent with public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Mutual termination	It is allowed.	It is allowed.	The same regulation
Notice by tenant	<p>(i) The lessee of a dwelling has the right to dissolve the contract of lease by warning the lessor in writing a month in advance.</p> <p>(ii) The lessee has the right to bring an action to a court for dissolution of a contract of lease</p>	<p>(i) The lessee of a dwelling has the right to dissolve the contract of lease by warning the lessor in writing a month in advance.</p> <p>(ii) The lessee has the right to bring an action to a court for dissolution of a contract of lease</p>	The same regulation

	before time, if where are conditions settled in the CC.	before time, if where are conditions settled in the CC.	
Notice by landlord	<p>(i) The lessor shall have the right to bring an action into a court for the dissolution of a contract of lease before time, if where are conditions settled in the CC.</p> <p>(ii) A contract of lease of a dwelling of indeterminate term may be dissolved upon the demand of the lessor with a written warning issued to the lessee six months in advance.</p> <p>(iii) In the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its</p>	<p>(i) The lessor shall have the right to bring an action into a court for the dissolution of a contract of lease before time, if where are conditions settled in the CC.</p> <p>(ii) A contract of lease of a dwelling of indeterminate term may be dissolved upon the demand of the lessor with a written warning issued to the lessee six months in advance.</p> <p>(iii) In the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its</p>	The same regulation



	<p>designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided. In the event where the lessee, his family members or other persons residing together with him create by their improper behaviour such conditions which render it impossible for other persons who reside together or in the neighbourhood to lead normal life, they may be evicted upon the request of the lessor or the latter persons without other dwelling being provided.</p>	<p>designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided. In the event where the lessee, his family members or other persons residing together with him create by their improper behaviour such conditions which render it impossible for other persons who reside together or in the neighbourhood to lead normal life, they may be evicted upon the request of the lessor or the latter persons without other dwelling being provided.</p>	
Other reasons for termination	<p>(i) Termination as a result of execution proceedings against the landlord if the lease contract is not registered.</p> <p>(ii) Termination as a result of urban renewal or expropriation of the landlord.</p>	<p>i) Termination as a result of execution proceedings against the landlord if the lease contract is not registered.</p> <p>(ii) Termination as a result of urban renewal or expropriation of the landlord.</p> <p>(iii) Termination when the person or</p>	<p>1. Dwelling rent with public task</p> <p>2. Dwelling rent without public task</p>

		<p>family acquire ownership rights of the dwelling.</p> <p>(iv) Termination when the tenant of the social dwelling exceeds the income limits settled by the Government, except the cases when the overrun is less the 5 percent and the tenant or his family member at the time of the data about his income submission to the Municipality is registered in the Labour Exchange or is disabled.</p> <p>The CC establishes two institutes for “prolongation rights” of tenant: the preservation of the right to use state or municipality dwelling upon temporary departure and the reservation of a state or a municipality dwelling.</p>	
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### 6.7. Enforcing tenancy contracts

- a. Eviction procedure: conditions, competent courts, main procedural steps and objections

Under the CC there are **these cases of eviction from rented dwelling**:

- (i) a contract of lease of dwelling may be acknowledged null and void, it may be dissolved, likewise the eviction of natural persons from the dwelling premises may be executed exclusively upon judicial proceedings, except in the cases of eviction executed with the sanction of the public prosecutor provided for in this Code (Article 6.610 of the CC);
- (ii) upon termination of a contract of lease of a dwelling, a contract of sublease shall also terminate at the same time. The sublessee, as well as the temporary dwellers who refuse to vacate the dwelling shall be evicted under judicial proceedings without another dwelling being provided (Article 6.597 of the CC);
- (iii) in the instances where persons wilfully occupy a dwelling, i.e. move in without concluding a contract of lease, they shall be evicted within judicial proceedings without another dwelling being provided (Article 6.612 of the CC);
- (iv) in the instances of dwelling premises of the state, municipalities or legal persons being brought into a condition of dilapidation or rendered unfit for habitation due to natural disasters, fire or technical wear and tear, natural persons shall be evicted with the sanction of the public prosecutor with another adequately equipped dwelling fit for habitation being provided. This dwelling shall be provided by the owner of the building where the dilapidated or unfit for habitation dwelling is located. In such instances, the former contract of lease shall be deemed to have terminated (Article 6.615 of the CC);
- (v) upon the termination of labour (public service) agreement, the employee who was maintaining occupancy of an office dwelling premise granted under established procedure shall be obliged together with the family members residing with him to vacate the office dwelling premise. Failing that, natural persons shall be evicted without other dwelling premises being granted to them, except in cases stipulated in this Code (Article 6.620 of the CC);
- (vi) upon the expiration of the labour agreement or the period of study, the employees shall be evicted from the hostel, except in cases provided in this Code. The persons who study shall be evicted at the end of the academic year. Hostel dwellers may be evicted without other dwelling being granted in the instances where they create by their improper behaviour such conditions which render it impossible for others to maintain occupancy together or in the neighbourhood, likewise in the instances where they continuously damage the dwelling or use it not according to its designation. Eviction shall be effectuated in accordance with the judicial proceedings (Article 6.623 of the CC);
- (vii) the rules in respect of the operation and use of homeless shelters established on charity or any other grounds and granting the possibility to gratuitously spend the night for persons in need shall be determined and registered with the municipality by their founders. Any disputes related with the use of such homeless shelters and eviction therefrom shall be decided pursuant to those rules (Article 6.627 of the CC).

**The eviction procedure** is settled in the CCP. The Article 766 of the CCP regulates the protection of evictee's property. Property of an evictee must be taken over by the evictee himself. If the evictee is not present at the eviction or refuses to take the vacated

property, a bailiff thereof should ensure protection. The bailiff shall distraint and assess the property located in the evictee's residence. The appointed keeper shall give the distrainted property together with a copy of the distrainted property list for keeping. A copy of the distrainted property list shall be also sent or otherwise delivered to the debtor.

The bailiff can also safeguard property. The keeper of the property shall hand the property over to the debtor in accordance with the bailiff's warrant. All costs related to safeguarding of the property shall be covered by the debtor.

Should the debtor fail to take his property within three months from the date of giving the property to the keeper, the property shall be sold in the special procedure while income after deduction of pertinent execution costs shall be given to the debtor.

The Article 768 of the CCP regulates the eviction from the dwelling by prosecutor. The sanction for the eviction is executed during 7 days of its presentation day for the persons who must be evicted. The persons who must be evicted are urged on, if possible, to leave immediately. In urgent cases, the persons are evicted immediately.

The sanction for the eviction is executed by the bailiff who is acting in the territory of dwelling, from which people are evicted, in accordance with the provisions of the CCP. If the person refuses to admit bailiff into the dwelling, or makes other activities to prevent eviction, eviction is executed with assistance of the police.

If there is a justifiable reason, the court, the prosecutor who has given sanction to evict, as well as higher-ranking prosecutor upon the application of persons concerned or the bailiff's application has the right to postpone the eviction.

The Article 769 of the CCP regulates the eviction from residential and non-residential premises.

According to the judgment of the dwelling must be evicted only in the order specified persons with their property.

About the time of the eviction the debtor must be informed upon written notice no later than 5 business days.

In the case where are evicted minor children without other dwelling's rendering, the bailiff must at the same time as sending of encouragement, but not later than thirty days before the date of the eviction, give written notice about eviction time and place for the State child protection authorities.

The eviction is usually conducted in participation of the person who must be evicted. In cases where this person is hiding or fails to execute bailiff's encouragement to leave the premises, the bailiff executes the eviction in forced order with participation of the police and the representative of the forced relocation to the procedure at the police and the representative of the assets guardian. About the forced eviction the bailiff writes the eviction protocol of the form established in the Decisions implementation instruction.

**In the procedure of the eviction competent are** general courts of general jurisdiction of Lithuania. These courts also examine the complaints about bailiff's actions.

b. Rules on protection ("social defences") from eviction

**There are recognised these rules on protection (“social defences”) from eviction:**

(i) dissolution of a contract and eviction of persons with another fit for habitation dwelling being provided (Article 6.616 of the CC).

Natural persons may be evicted from dwelling premises of the state, municipalities and legal persons leased to their employees with another fit for habitation dwelling being provided in the following instances:

- 1) the apartment house where the dwelling is location is subject to demolition;
- 2) the dwelling was not retained after capital repair, reconstruction or change of planning of the premises;
- 3) the dwelling premises are transformed for other designation.

Another dwelling fit for habitation shall be granted by the lessor or other legal person in whose interests the apartment house is being demolished or reconstructed and the dwelling premises are modified for another designation.

(ii) eviction from office dwelling premises by granting another dwelling (Article 6.621 of the CC).

In the cases stipulated in Article 6.616 of this Code, natural persons evicted from office dwelling premise shall be granted another dwelling premise, likewise in the events when the evicted persons are:

- 1) employees (public servants) discharged from work (service) in the event of their having become group I or group II invalids due to the reasons related with their work (public service);
- 2) members of the family of an employee (public servant) who was a lessee of an office dwelling and is dead or missing due to the reasons related with the work (public service).

(iii) granting of another dwelling to evicted natural persons (Article 6.622 of the CC).

Another dwelling granted to evicted natural persons must be in the same residential district and conform to the sanitary and technical requirements.

- c. May rules on the bankruptcy of tenant-consumers influence the enforcement of contracts?

In Lithuania the bankruptcy of tenant-consumers is regulated in the law on the bankruptcy of natural persons of the Republic of Lithuania (LBNP).

Under the Article 6 para 1 of the LBNP the court takes decision for the case of natural person's bankruptcy if this person is insolvent (the person cannot prosecute his obligations of debts and the sum of these obligations exceeds 25.000 LTL) and there are no of legal grounds to reject the procedure of the bankruptcy of natural person.

The rules on the bankruptcy of tenant influence the enforcement of contracts because from the day of the courts decision's coming into effect it is considering that all terms of the natural person's debt's payment are terminated (the Article 19 of the LBNP). According to the Article 29 para 4 of the LBNP the claims of lessors are fulfilled in the second rang of the creditor's claims.

These rules are also applicable in the cases of the dwelling's rent with public task.

### Enforcing tenancy contracts

	Dwelling rent without public task	Dwelling rent with public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Eviction procedure	<p>The CC establishes cases of eviction from rented dwelling.</p> <p>The eviction procedure is settled in the CCP.</p> <p>In the procedure of the eviction competent are general practice courts of Lithuania. These courts also examine the complaints about bailiff's actions.</p>	<p>The CC establishes cases of eviction from rented dwelling.</p> <p>The eviction procedure is settled in the CCP.</p> <p>In the procedure of the eviction competent are general practice courts of Lithuania. These courts also examine the complaints about bailiff's actions.</p>	The same regulation
Protection from eviction	<p>(i) Granting another dwelling</p> <p>(ii) If there is a justifiable reason, the court, the prosecutor who has given sanction to evict, as well as higher-ranking prosecutor upon the application of persons concerned or the bailiff's application has the right to postpone the eviction.</p>	<p>(i) Granting another dwelling</p> <p>(ii) If there is a justifiable reason, the court, the prosecutor who has given sanction to evict, as well as higher-ranking prosecutor upon the application of persons concerned or the bailiff's application has the right to postpone the eviction.</p>	The same regulation

Effects of bankruptcy	The rules on the bankruptcy of tenant influence the enforcement of contracts because from the day of the courts decision's coming into effect it is considering that all terms of the natural person's debt's payment are terminated The claims of lessors are fulfilled in the second rang of the creditor's claims.	The rules on the bankruptcy of tenant influence the enforcement of contracts because from the day of the courts decision's coming into effect it is considering that all terms of the natural person's debt's payment are terminated The claims of lessors are fulfilled in the second rang of the creditor's claims.	The regulation same
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### 6.8. Tenancy law and procedure “in action”

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in our field (“tenancy law in action”) is taken into account:

- What is the role of associations of landlords and tenants?

Firstly it should be noted that in the Lithuania there are no **tenants associations**. But the tenants can defend their rights by applying to some public institutions: to the State Consumer Rights Protection Authority, to the Office of Equal Opportunities Ombudsperson, etc.

*State Consumer Rights Protection Authority*<sup>192</sup> coordinates state institutions' activities on protection of consumers.

The mission of the Authority is to ensure a high protection level of consumers in Lithuania through building of the consumer rights protection system aligned with European Union law.

Authority's strategic goal is to implement the state policy on consumer rights protection intended to guarantee effective consumer rights protection.

Authority's activities:

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<sup>192</sup>Homepage of the the State Consumer Rights Protection Authority. Available at: <<http://www.wtat.lt/index.php?225846438>> (last visited 4 Mar. 2013).

- (i) coordinates state institutions' activities on protection of consumers;
- (ii) protects consumers' public interest;
- (iii) performs alternative consumers' disputes resolution;
- (iv) undertakes control over practice of unfair terms specified in the contracts with consumers
- (v) analyzes consumer complaints on unfair contract terms;
- (vi) coordinates and implements protection of consumer economic interests, supervises market of consumer products and services;
- (vii) carries out-of-court examination of consumer complaints resulting from consumers' disputes with credit providers;
- (viii) undertakes control on how requirements for advertising stipulated in the Law of Advertising are complied with;
- (ix) within the limits of its competence applies action measures intended by law to trespassers who infringe the Law of Consumer Rights Protection, Law of Product Safety and Law of Advertising;
- (x) organizes and carries out education of consumers, sellers, producers and services providers';
- (xi) provides information for consumers about unsafe products, which have appeared or may appear in the market;
- (xii) organizes the exchange of information with the European Union and Member States.

So the tenant as the consumer of the dwelling's rent services can apply to the State Consumer Rights Protection Authority and demand to protect his rights.

*The Office of Equal Opportunities Ombudsperson*<sup>193</sup>, which is an independent state institution accountable to the Parliament, is one of the key institutions within the equal opportunities and gender equality machinery. The Ombudsman investigates individual complaints on the grounds of gender, age, racial or ethnic origin, religion and beliefs, disability, sexual orientation, language, social status.

Therefore the tenant can apply to this institution if he thinks that the dwelling's rent contract discriminate him on the grounds of gender, age, racial or ethnic origin, religion and beliefs, disability, sexual orientation, language, social status.

**The interests of dwelling's landlords** are represented by the Lithuanian Chamber of Housing Management and Maintenance (NGO). Members of the organisation are housing management associations and their umbrella organisations, companies managing community housing services, public properties, owner's right associations etc.

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<sup>193</sup>Homepage of the Office of Equal Opportunities Ombudsperson. Available at: <<http://lygybe.lt/?pageid=26>> (last visited 4 Mar. 2013).



The main activities performed by Lithuanian NGO are: coordination of the activities of the Members, representation of their interests on international and national levels, protection of consumer rights and legal interests, education of consumers, promotion of owners economic and social interests as the top priority.

Lawyers of the organisation provide to consumers and house owners verbal, written and telephone consultations of their rights, provide information on valid national and EU legal acts in this field, mediates in solving disputes. Organisation provides legal conclusions for governmental institutions. If serious violations occur Lithuanian NGO examines unfair actions and takes decisions in the Commission of Ethics Control.

Organisation is actively involved in the state housing policy development, implementation of objectives of the state housing strategy. It helps the authorities to implement the resolutions of the Government on housing management, maintenance, operational capacity.

Lithuanian NGO makes offers, conclusions, remarks, opinions, preparing and enacting legal acts, participates in processing projects of legal acts in state institutions, provides notes on valid legal acts as well.

Association assists the Government as to implementation of energy-saving and home renovation programme. We make recommendations for the homeowners associations and managers as rational as better, less costly but more effective to achieve the expected energy savings result. Our experts trains homeowners how to take fair legal decisions, bodies of associations of house owners and management companies – how to solve the issues, how to control conflicts, examine the complaints.

Lithuanian NGO actively cooperates with the Office of the Government, Environment Committee of Lithuanian Parliament, Ministry of Environment, Ministry of Energy, Ministry of Economy, Ministry of Justice, the State Consumer Rights Protection Authority, other governmental institutions, city and regional municipalities, non-governmental organizations. We closely collaborate with organisations in other countries, participate in common trainings, seminars, projects.

In the case of social housing the interests of the Municipalities are represented by the Association of Local Authorities in Lithuania (ALAL). ALAL is a non-profit, non-Governmental organization, representing the common interests of its members - local authorities in all national institutions, as well as in international organizations of local authorities.

The mission of ALAL is to implement the essential rights of local self-government and to foster its development, by influencing decisions taken by national authorities and international institutions.

The Association seeks to implement the provisions of the European Charter of Local Self-Government in Lithuania, to organize and coordinate activities of its members in the areas of investment attraction, development of municipal economies, improvement of legislature, business support, public security, culture, education, science, health care, social care and protection, improvement of local services, as well as relations with international organizations and municipalities abroad.

- What is the role of standard contracts prepared by association or other actors?

**In the case of the dwelling rent without public task** the contracts are concluded rarely because how is mentioned above the landlords seek to avoid the taxes. The exemption here could be the cases when the employer rents the dwellings from the landlord for his employee and legitimize the rent process.

In taking of standard contracts in the commercial dwelling rent market it could be say that there the standard contracts are prepared by the real estate agencies or lawyer's firms according to the general rules of the CC. But these services are quite expensive consequently they are not popular.

**In the case of the dwelling rent with public task** the standard contracts are prepared by the lessors – the Municipalities. Namely these contracts should be signed in the case of the social housing rent.

Here it could be added that in the cases where are applicable the standard conditions of the contract there are applicable special rule which protect the tenant as the consumer. The Article 6.185 of the CC provides that standard conditions shall be such provisions which are prepared in advance for general and repeated use by one contracting party without their content being negotiated with the another party, and which are used in the formation of contracts without negotiation with the other party.

Standard conditions prepared by one of the parties shall be binding to the other if the latter was provided with an adequate opportunity of getting acquainted with the said conditions.

Under the Article 6.186 of the CC no surprising condition contained in a standard condition contract, i.e. such condition that the other party could not reasonably expect to be included in the contract, shall be effective. Standard condition shall not be considered surprising if they were expressly accepted by the party when they were duly disclosed thereto.

In determining whether a condition is of surprising character, regard must be taken of its content, wording and form of expression.

A party who enters into a contract of adhesion where the standard conditions are drawn up by the other party shall have the right to claim for dissolution or modification of that contract in the event where, even though the standard conditions of the contract are not contrary to the law, they exclude the party's rights and possibilities that are commonly granted in a contract of that particular class, or exclude or limit civil liability of the party who prepared the standard conditions, or establish other provisions which violate the principle of equality of parties, cause imbalance in the parties' interests, or are contrary to the criteria of reasonableness, good faith and justice.

According to the Article 6.187 of the CC in the event of conflict between standard conditions and non-standard conditions, preference shall be given to the latter, i.e. to those which have been individually negotiated by the parties.

The Article 6.188 of the CC establishes the peculiarities of conditions in consumer contracts:

1. A consumer shall have the right to claim within the judicial procedure for invalidity of conditions in a consumer contract that are contrary to the criterion of good faith.

2. Conditions of a consumer contract which have not been individually negotiated shall be regarded as unfair if they cause a significant imbalance in the parties' rights and duties to the detriment of consumer rights and interests, i.e. the conditions which:

1) exclude or limit the civil liability of a seller or service supplier for damage caused by the death of a consumer or impairment of his health, likewise for the damage caused to his property;

2) exclude or limit the rights of a consumer vis-à-vis a seller, service supplier or another party in the event of total or partial non-performance or improper performance by the seller or service supplier of any of the contractual obligations;

3) make contractual conditions binding on the consumer whereas contractual obligations of the seller or service supplier are subject to other conditions, the realisation of which depends solely on the latter's own will;

4) permit the seller or service supplier to retain sums paid by the consumer where the latter decides not to conclude a contract or refuses to perform it without providing for any rights of the consumer to receive in compensation the sums of the same amount from the seller or service supplier when they unilaterally dissolve the contract;

5) establish a disproportionately high civil liability of the consumer who fails to fulfil his obligation or fulfils it improperly;

6) authorise the seller or service supplier to dissolve the contract unilaterally or rescind it at any time, and no adequate facility is granted to the consumer, or provide the seller or service supplier with the right not to compensate the consumer for the amounts received therefrom before the performance of the contract in the event where the seller or service supplier unilaterally dissolve or rescind the contract;

7) enable the seller or service supplier to dissolve an indeterminate contract without any reasonable grounds without due notification of the consumer about such dissolution;

8) entitle the seller or service supplier with the right to unilaterally extend a fixed-term contract automatically, or establish unreasonably short time-limit for the consumer to express his opinion upon the extension of the contract, or set forth a requirement for the consumer to express his assent or dissent upon the extending of the contract unreasonably early;

9) irrevocably bind the consumer to the conditions with which he had no real opportunity of becoming acquainted before the conclusion of the contract;

10) enable the seller or service supplier to alter the conditions of the contract unilaterally without there being any contractual or sufficient grounds;

11) enable the seller or service supplier unilaterally and without any sufficient grounds to modify any characteristics of the good or services to be provided;

12) entitle the seller or service supplier with the right to unilaterally determine the prices of goods and services at the time of their provision, or allow the seller of goods or supplier of services to unilaterally increase the price without providing the consumer with the right to cancel the contract in the case where the final price is higher than that stipulated in the contract. This provision shall not apply for contracts in respect of securities or other financial documents, or for contracts on alienation of things or

provision of services where the price is dependent upon the fluctuation of exchange rates or indexes on the exchange, and is beyond the control of the seller or service supplier, likewise for purchase-sale contracts for foreign currencies, travellers cheques or international money orders expressed in a foreign currency;

13) entitle the seller or service supplier with the right to unilaterally determine whether the goods supplied or services rendered are in conformity with the requirements of the contract;

14) provide the seller or service supplier with the exclusive right to interpret the contract;

15) limit the duty of the seller or service supplier to perform obligations undertaken by their agents, or render such obligation subject to compliance with a particular formality;

16) obligate the consumer to fulfil all his obligations to the seller or service supplier even in the event of total or partial non-performance by the seller or service supplier of their own obligations;

17) provide the seller or service supplier with the right of transferring their rights and obligations under the contract without the consumer's consent, where such transferring may reduce the guarantees for the consumer;

18) exclude or hinder the consumer's right to bring action or exercise any other remedy (by requiring the consumer to take disputes exclusively to arbitration, restricting the use of evidence, by imposing on him the burden of proof, etc.).

3. Any other conditions of a consumer contract may be acknowledged by a court unfair. Conditions shall be considered as not having been individually negotiated where the consumer is deprived of the possibility to influence the process of their preparation, in particular where such conditions are determined in advance in the standard contract prepared by the seller or service supplier. In the event where certain conditions in the contract prepared in advance were individually negotiated, the provisions established in the present Article shall apply to other conditions of such contract. The burden of proof that such conditions were individually negotiated shall rest upon the seller or service supplier.

4. The consumer whose interests are violated by the application of unfair conditions shall be entitled to apply also to institutions for the protection of consumer rights. The institutions for the protection of consumer rights shall be entitled within the procedure established by laws to effectuate control over the standard conditions of contracts and challenge unfair conditions in the consumer contracts.

- *How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?*

**In the case of the dwelling rent without public task** the parties firstly try to carry out their disputes voluntary. When the contract of lease is not concluded the parties, especially the lessor, avoid revealing the fact of the lease's legal relationships so they try to negotiate. When the contract of lease is concluded commonly there is a provision about the solution of disputes, which indicates that firstly the parties must negotiate, and if they do not agree during the appropriate period when they can appeal to the court.

**In the case of the dwelling rent with public task** in the rent contracts is the standard provision that all the disputes arising from the contract must be decided by parties' negotiations but if they fail to do that during 14 days from the one's party written notice about the breach of the contract to another party, the dispute must be solved in the courts.

The disputes, which are arising from the tenancy relationship, are judged in courts of general jurisdiction. Here it should be noted that the dispute, which is arising from social housing contract, will be assigned to courts of general jurisdiction because the contract of social housing is concluded under the provisions of the CC. But the dispute, which is arising from Municipality's actions or acts, related to the social housing, will be assigned to administrative courts because this dispute is arising from administrative legal relations.

Hence there is no special jurisdiction for the tenancy disputes. Possibilities of appeal in the disputes, which are arising from the tenancy relationships, are ordinary, there are no any particularities.

- Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?

According to the data of the National Courts Administration of Lithuania in the first instance courts of general jurisdiction in 2010 were received 841 cases about dwelling rent, in 2011 – 631 cases and in 2012 – 486 cases<sup>194</sup>.

In the first instance courts 80 – 90 percent of cases for rent of dwelling are solved in the period lesser than 6 months. About the duration of the appeal and the cassation in the cases of dwelling rent there are no of statistics. In the database of the national court's decisions<sup>195</sup> it could be found this length of procedures according to the process of dwelling's rent disputes, for example, the court of first instance adopted its decision on 23 February 2011, the Court of Appeal of Lithuania adopted its decision on 27 April 2012, the Supreme Court of Lithuania adopted its decision on 17 January 2013; the court of first instance adopted its decision on 30 March 2011, the Court of Appeal of Lithuania adopted its decision on 21 September 2011, the Supreme Court of Lithuania adopted its decision on 2 May 2012.

**So the average length of procedures is not established**, it could be say that the duration of such procedures can fluctuate considering the workload of the courts, the complexity of the case, etc. However the Article 72 para 1 of the CCP establishes that a court shall heed that a civil case is heard in a court as promptly as possible, case

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<sup>194</sup>National Courts Administration of Lithuania. Availale at (in Lithuanian): <<http://www.teismai.lt/lt/teismai/teismai-statistika/>> (last visited 4 Mar. 2013).

<sup>195</sup>Database of national courts decisions. Available at (in Lithuanian): <<http://www.infollex.lt/tp/>> (last visited 4 Mar. 2013).

hearing is not delayed, shall pursue that a civil case is heard during a single court session.

According to the Article 768 para 4 of the CCP upon presence of sound reasons, the court, public prosecutor who rendered eviction sanction as well as the senior public prosecutor **may postpone eviction** at a petition of persons concerned or the bailiff.

- Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?

In sphere of the dwelling rent **the problem of justice and fairness** could be found in such a way that the relationship of dwelling rent are often hidden with purpose to avoid the taxes. When there are no evidences of the dwelling's rent fact it could be more complicated to the courts to exercise justice and adopted the fair decisions.

In Lithuania there are no indicated **problems of access to courts** neither for landlords nor for tenants. Here we could mention only the institute of the official fee which must be paid by the person who applies to the court and which depends on the sum of the dispute. When the tenant is the natural person and the official fee is big, here could be a problem for such person to pay such fee. Other problem could be the expensive services of lawyers which could be inaccessible for all tenants. In such cases people who require of the social support can get the legal aid according to the Law on the legal aid guaranteed by the State of Lithuania<sup>196</sup>.

Under the Article 79 of the CCP **legal fees** consist of the official fee and any expenses connected with hearing the case. According to the Article 83 para 3 and 4 of the CCP at the request of the person, the court, while taking into consideration the person's material situation, shall be entitled by means of summary proceedings to release him in part from the payment of the official fee. A petition to release a person in part from the payment of the official fee must be reasoned. Proof confirming the grounds of the request must be annexed to the petition. The court ruling concerning this petition must be reasoned.

Natural persons, who have been recognised by the procedure established by Government as entitled to receive social assistance, shall be released from the payment of the litigation expenses except those expenses: reimbursement for the expenses of the curator's work; expenses to pay for the assistance of a lawyer or apprentice; expenses connected with the appointment of public legal assistance.

Under the Article 93 para 1 and 2 of the CCP the litigation expenses, incurred by the party, in whose favour the judgment was made, shall be awarded by the court to this party from the second party even though the latter is released from the payment of litigation expenses into the state budget.

If the statement of claim is satisfied in part, the expenses referred to in this article shall be awarded to the plaintiff in proportion to the part of the claims satisfied by the court

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<sup>196</sup>The Law on the legal aid guaranteed by the State of the Republic of Lithuania (amended and supplemented). Official Journal, 2000, No. 30-827.

and to the defendant in proportion to the part of the claims of the statement of claim that were refused by the court.

**Legal aid**<sup>197</sup> in Lithuania has two types: primary legal aid and secondary legal aid.

Primary legal aid means the provision of legal information, legal advice and drafting of documents to be submitted to state and municipal institutions, with the exception of judicial documents.

The persons willing to obtain primary legal aid, should apply to the municipality of the place of their declared residence. Civil servants, employees of the municipality administration, as well as advocates or specialists from public institutions with whom the municipality has signed an agreement give personal advice how to resolve a dispute out of court, inform about the legal system, laws and other legal acts, help to draw up a peaceful settlement agreement and complete an application for legal aid.

Primary legal aid should be provided immediately. If it is not possible, a person will be notified of the time of an appointment, which must take place not later than 5 days from the day of his application.

The duration of legal advice should not be longer than one hour. Its duration may be extended by a decision of the executive institution of a municipality or a person authorised by it.

A person may apply for primary legal aid on the same issue only once.

Primary legal aid will be provided to him, if:

- he is a citizen of Lithuania;
- he is a citizen of the member state of the European Union;
- he resides lawfully in Lithuania or other member state of the European Union;
- he is entitled to legal aid according to international treaties of Lithuania.

Secondary legal aid means the state-guaranteed lawyer's assistance in judicial proceedings: drafting of documents, defence and representation in proceedings, including enforcement proceedings, as well as representation of your interests in dispute resolution out-of-court.

The appointed lawyers will prepare the documents necessary and will represent person's interests at court or in dispute resolution out-of-court. The lawyer will also take other actions in his/her competence, as specified in the decision of the court.

Persons receiving secondary legal aid may get reimbursement of the litigation costs incurred:

- in civil proceedings;
- in administrative proceedings;

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<sup>197</sup>Homepage of the legal aid guaranteed by the State of the Republic of Lithuania. Available at: <http://www.teisinepagalba.lt/en/> (last visited 6 Feb. 2013).

or the costs related to the hearing of a civil action brought in criminal proceedings.

There are two levels of financing. If person's income and assets do not exceed the first level of financing, he will receive a lawyer free of charge; if they do not exceed the second level of financing, 50 percent of the costs will be reimbursed by the state. The level of person's assets and income will be assessed by the state-guaranteed legal aid service based on the data provided in the annual resident's (family's) property declaration and in person's application.

In order to get a state-financed lawyer, a person must contact the state-guaranteed legal aid service assigned to the municipality and submit an application, which may be filled out with the assistance of a specialist of primary legal aid.

If person's income and assets exceed the levels set by the Government, person's infringed or disputed a private lawyer may defend rights. Contact details of the lawyers registered in Lithuania are available on the special website [www.advoco.lt](http://www.advoco.lt).

A person can receive secondary legal aid if his assets and annual income do not exceed the asset and income level set by the Government of Lithuania and:

- he is a citizen of Lithuania or
- he is a citizen of the member state of the European Union or
- he resides lawfully in Lithuania or other member state of the European Union

There are groups eligible for secondary legal aid irrespective of personal asset and income levels, for example, persons entitled to social allowance, persons entitled to aid in criminal proceedings, etc.

Upon arrival at the State-Guaranteed Legal Aid Service (there are 5 territories of activities of SGLA Services – Vilnius SGLA Service, Kaunas SGLA Service, Klaipėda SGLA Service, Panevėžys SGLA Service, Šiauliai SGLA Service) person will have to submit:

- a completed application for secondary legal aid;
- a document to confirm person's identity: passport, identity card, new model driving licence, and, if applicable, permission for permanent or temporary residence in Lithuania/EU member state;

The application and documents proving the person's right to secondary legal aid may also be submitted by post.

If person is requesting the Service to decide on his eligibility for secondary legal aid based on his income and assets, in addition to his application and personal identity document, he has to submit his annual resident's (family's) property declaration with the tax administrator's mark that the declaration has been submitted.

**Insurance against legal costs** is mentioned in the order of the Minister of Justice of Lithuania No. 1R-124 on the approval of the form of application to receive secondary



legal aid<sup>198</sup>. Here is established that a person must indicate if he is insured by the insurance against legal costs, but there is no of the concept of the insurance against legal costs. This concept is not indicated neither in the CCP of Lithuania, nor in the Law on the legal aid guaranteed by the State of Lithuania<sup>199</sup>.

But the insurance companies acting in Lithuania offer the services of insurance against legal costs but only for their business clients. According to the rules of employer's civil liability insurance legal costs are the part of the insurance allowance<sup>200</sup>.

So there are no data that insurance companies in Lithuania provide services of insurance against legal costs for their private clients. This service is provided only for business clients.

- How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)

It should be noted that in Lithuanian tenancy law the main sources are the laws and the practice of courts. There is no special literature in Lithuanian language about the tenancy law except some course books which have chapters for the rent.

- What are the 10-20 most serious problems in tenancy law and its enforcement?

The **most serious problems in tenancy law and its enforcement** in Lithuania are:

1. people do not conclude the dwelling rent contracts in writing;
2. evasion of taxes from the lessors side;
3. if the dwelling rent contract is not registered under the rules of laws it cannot be used against third parties;
4. in the cases of social housing rent the tenants constantly do not pay the rent payment but they cannot be evicted because of their minor child;
5. the taxes regulation is not attractive for the investors, who want to get income from the rent of dwellings;
6. funds of social housing in the Municipalities decrease for the declining financing of the Municipalities budgets and the demand of the social housing increases;
7. where is the problem of separation of dwelling rent and loan for use of dwelling when where is no of written contract and evidences of payments;

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<sup>198</sup>The order of the Minister of Justice of the Republic of Lithuania No. 1R-124 on the approval of the form of application to receive secondary legal aid (27 April 2005). Official Journal, 200, No. 54-1860.

<sup>199</sup>The Law on the legal aid guaranteed by the State of the Republic of Lithuania (amended and supplemented). Official Journal, 2000, No. 30-827.

<sup>200</sup>The rules of civil liability ensurance. Available at (in Lithuanian): <[http://www.spainetosdraudimas.lt/uploads/draudimo\\_taisykles/Ergo/Verslo\\_klientams/Ergo\\_imoniui%20\\_bendrosios\\_civilines\\_atsakomybes.pdf](http://www.spainetosdraudimas.lt/uploads/draudimo_taisykles/Ergo/Verslo_klientams/Ergo_imoniui%20_bendrosios_civilines_atsakomybes.pdf)> (last visited 6 Feb. 2013).

8. the right of the lessor to demand the deposit is restricted by the sum of rent payment for one month;
  9. there is no legislation about the minimum and maximum levels of real estate agents salaries;
  10. there is no possibilities for persons who have right to the social housing to conclude commercial housing rent contract and to get the compensation of the rent payment's part;
  11. there is no legitimized opportunity for people who lost their right to the social housing because they increased income to continue the dwelling rent under the commercial dwelling rent conditions.
- Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?

The area of “non-enforcement” of tenancy law is the Article 6.583 para 4 of the CC which establishes that the amount of lease payable for dwellings leased out on commercial grounds by enterprises, offices, organisations and legal persons shall be determined upon the agreement of the parties, though the maximum amount of the lease payment may not exceed the maximum lease payment determined in accordance with the procedure established by the Government. But the Government still do not adopt such procedure and the maximum lease payment.

#### Tenancy law and procedure “in action”

	Dwelling rent without public task	Dwelling tent with public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
The role of associations of landlords	The interests of dwelling's landlords are represented by the Lithuanian NGO.	The Municipalities are represented by the ALAL	The same regulation
The role of associations of tenants	In the Lithuania there are no of dwelling's tenants associations.	In the Lithuania there are no of dwelling's tenants associations.	The same regulation
The role of standard contracts prepared by	The contracts are concluded rarely because the	The standard contracts are prepared by the	1. Dwelling tent with public task

association or other actors	landlords seek to avoid the taxes.  In the commercial dwelling rent market it could be say that there the standard contracts are prepared by the real estate agencies or lawyer's firms according to the general rules of the CC.	lessors – the Municipalities. Namely these contracts should be signed in the case of the social housing rent.	2. Dwelling rent without public task
How are tenancy law disputes carried out?	The parties firstly try to carry out their disputes voluntary. When the contract of lease is concluded commonly there is a provision about the solution of disputes which indicates that firstly the parties must negotiate and if they do not agree during the appropriate period when they can appeal to the court.	In the rent contracts is the standard provision that all the disputes arising from the contract must be decided by parties' negotiations but if they fail to do that during 14 days from the one's party written notice about the breach of the contract to another party, the dispute must be solved in the courts.	1. Dwelling rent with public task 2. Dwelling rent without public task
The average length of procedures	The average length of procedures is not established, it could be say that the duration of such procedures can fluctuate considering the workload of the courts, the complexity of the case, etc.	The average length of procedures is not established, it could be say that the duration of such procedures can fluctuate considering the workload of the courts, the complexity of the case, etc.	The same regulation

Peculiarities for the execution of tenancy law judgments	According to the the Article 768 para 4 of the CCP upon presence of sound reasons, the court, public prosecutor who rendered eviction sanction as well as the senior public prosecutor may postpone eviction at a petition of persons concerned or the bailiff.	According to the Article 768 para 4 of the CCP upon presence of sound reasons, the court, public prosecutor who rendered eviction sanction as well as the senior public prosecutor may postpone eviction at a petition of persons concerned or the bailiff.	The same regulation
Problems of fairness and justice	The relationship of dwelling rent is often hidden with purpose to avoid the taxes. When there are no evidences of the dwelling's rent fact it could be more complicated to the courts to exercise justice and adopted the fair decisions.	When the tenant is the natural person and the official fee is big, here could be a problem for such person to pay such fee. Other problem could be the expensive services of lawyers which could be inaccessible for all tenants.	In both types of rent where are some problems.
The problems of access to courts	When the tenant is the natural person and the official fee is big, here could be a problem for such person to pay such fee. Other problem could be the expensive services of lawyers which could be inaccessible for all tenants.	When the tenant is the natural person and the official fee is big, here could be a problem for such person to pay such fee. Other problem could be the expensive services of lawyers which could be inaccessible for all tenants.	The same situation
Legal fees	Under the Article 79 of the CCP legal fees consist of the	Under the Article 79 of the CCP legal fees consist of the	The same regulation

	official fee and any expenses connected with hearing the case. According to the Article 83 para 3 and 4 of the CCP at the request of the person, the court, while taking into consideration the person's material situation, shall be entitled by means of summary proceedings to release him in part from the payment of the official fee	official fee and any expenses connected with hearing the case. According to the Article 83 para 3 and 4 of the CCP at the request of the person, the court, while taking into consideration the person's material situation, shall be entitled by means of summary proceedings to release him in part from the payment of the official fee	
Legal aid	Legal aid in Lithuania has two types: primary legal aid and secondary legal aid.	Legal aid in Lithuania has two types: primary legal aid and secondary legal aid.	The same regulation
Insurance against legal costs	There are no data that insurance companies in Lithuania provide services of insurance against legal costs for their private clients. This service is provided only for business clients	There are no data that insurance companies in Lithuania provide services of insurance against legal costs for their private clients. This service is provided only for business clients	The same regulation
Legal certainty in tenancy law	In Lithuanian tenancy law is certain.	In Lithuanian tenancy law is certain.	The same regulation
Most serious problems in tenancy law and its enforcement	1. people do not conclude the dwelling rent contracts in written;	1. in the cases of social housing rent the tenants constantly do not pay the rent	In both types of rent there are some problems.

	<ol style="list-style-type: none"> <li>2. evasion of taxes from the lessors side;</li> <li>3. if the dwelling rent contract is not registered under the rules of laws it cannot be used against third parties;</li> <li>4. the taxes regulation is not attractive for the investors, who want to get income from the rent of dwellings;</li> <li>5. where is the problem of separation of dwelling rent and loan for use of dwelling when where is no of written contract and evidences of payments;</li> <li>6. the right of the lessor to demand the deposit is restricted by the sum of rent payment for one month;</li> <li>7. there is no legislation about the minimum and maximum levels of real</li> </ol>	<p>payment but they cannot be evicted because of their minor child;</p> <ol style="list-style-type: none"> <li>2. funds of social housing in the Municipalities decrease for the declining financing of the Municipalities budgets and the demand of the social housing increases;</li> <li>3. there is no possibilities for persons who have right to the social housing to conclude commercial housing rent contract and to get the compensation of the rent payment's part;</li> <li>4. there is no legitimized opportunity for people who lost their right to the social housing because they increased income to continue the dwelling rent under the commercial dwelling rent conditions.</li> </ol>	
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	estate agents salaries.		
The areas of “non-enforcement” of tenancy law	The e Article 6.583 para 4 of the CC, which establishes that the amount of lease payable for dwellings leased out on commercial grounds may not exceed the maximum lease payment determined by the Government. But the Government still do not adopt such maximum lease payment.	There are no such areas.	_____

## 7. Effects of EU law and policies on national tenancy policies and law

### 7.1. EU policies and legislation affecting national housing policies

In line with the principle of subsidiarity, the European Union has no power to pass housing legislation. The Commission also does not allow European Structural Funds to be spent directly on housing investment projects, partly because these funds are designed to meet economic, rather than social, objectives, and partly because these funds should not be used to replace national governments expenditure (the principle of additionality). The exception of this general rule could be the project JESSICA (Joint European Support for Sustainable Investment in City Areas) – an initiative of the European Commission developed in co-operation with the European Investment Bank and the Council of Europe Development Bank. It supports sustainable urban development and regeneration through financial engineering mechanisms. EU countries can choose to invest some of their EU structural fund allocations in revolving funds to help recycle financial resources to accelerate investment in Europe's urban areas.

Contributions from the European Regional Development Fund (ERDF) are allocated to Urban Development Funds (UDFs) which invest them in public-private partnerships or other projects included in an integrated plan for sustainable urban development. These investments can take the form of equity, loans and/or guarantees.

Alternatively, managing authorities can decide to channel funds to UDFs using Holding Funds (HFs) which are set up to invest in several UDFs.

This is not compulsory, but does offer the advantage of enabling managing authorities to delegate some of the tasks required to implement JESSICA to expert professionals.

Owing to the revolving nature of the instruments, returns from investments are reinvested in new urban development projects, thereby recycling public funds and promoting the sustainability and impact of EU and national public money<sup>201</sup>.

This overall clarity is, however, somewhat illusory. There are EU actions, such as in agriculture and labour market policies where Union actions complement national programmes. And, of course, financial assistance from a higher level of government does not preclude lower levels of government being able to decide how it is best spent. Indeed within nations such measures have become more commonplace in housing policies in recent decades<sup>202</sup>.

- EU social policy against poverty and social exclusion

In Lithuania are applicable these instruments of EU social policy against poverty and social exclusion related with housing:

(i) the European Code of Social Security (for example, here is established the benefit in respect of children housing);

(ii) the Convention on the Rights of Persons with Disabilities (for example, here is established the right of persons with disabilities to an adequate standard of housing, the duty of States to take measures, which shall include the identification and elimination of obstacles and barriers to accessibility, inter alia, buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing);

(iii) the Convention on the Rights of the Child (for example, here is established the duty of States to take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing).

- consumer law and policy

In Lithuania the main EU legislation's document concerning the consumer law and policy is the Directive concerning unfair commercial practices. This Directive defines the unfair commercial practices which are prohibited in the European Union. It thus protects the economic interests of consumers who conclude commercial transactions with traders. This Directive is important talking about commercial activities of housing.

- competition and state aid law

The Law on the competition of Lithuania<sup>203</sup> is prepared according to the provisions of the Council Regulation (EC) No 1/2003 on the implementation of the rules on competition

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<sup>201</sup>About JESSICA see: <[http://ec.europa.eu/regional\\_policy/thefunds/instruments/jessica\\_en.cfm#3](http://ec.europa.eu/regional_policy/thefunds/instruments/jessica_en.cfm#3)> (last visited 6 May 2013).

<sup>202</sup>Housing policy in the eu member states. Directorate General for Research Working Document Social Affairs Series - W 14. Available at: <[http://www.europarl.europa.eu/workingpapers/soci/w14/text2\\_en.htm#4](http://www.europarl.europa.eu/workingpapers/soci/w14/text2_en.htm#4)> (last visited 10 Apr. 2013).

<sup>203</sup>The Law on the competition of the Republic of Lithuania (amended and supplemented). Official Journal, 1999, No. 30-856.



laid down in Articles 81 and 82 of the Treaty. This Council Regulation is important in the cases of the commercial activities of housing.

The Article 107 of the Treaty on the functioning of the European Union indicates that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. In recent years, the Commission has started a process of modernisation and simplification of State aid procedures. To this end, the Council adopted Regulation No 994/98 of 7 May 1998, which enables the Commission to adopt so-called Block Exemption Regulations for State aid. With these regulations, the Commission can declare specific categories of State aid compatible with the Treaty if they fulfil certain conditions, thus exempting them from the requirement of prior notification and Commission approval. As a result, Member States are able to grant aid that meets the conditions laid down in these regulations without the formal notification procedure and only have to submit information sheets on the implemented aid.

- tax law

In 2003, when Lithuania entered in the European Union it undertook to absorb all the EU *acquis communautaire* in the tax regulation in a few years after the entering, i.e. Lithuania undertook to absorb the rules and provisions of the tax regulation of the European Union and to harmonize EU taxation law with the Lithuanian tax legislation. This duty of Lithuania was established in the Lithuania's negotiating position "Taxes"<sup>204</sup>.

The most relevant taxes of housing policy in the Lithuania are these taxes: the real estate tax (the tax object is real estate in Lithuania), the profit tax (the tax object is all in Lithuania and abroad earned income), the personal income tax (the tax object is all income received, including the income from the lease of real estate), the value added tax (tax payers are Lithuanian legal or natural person engaged in any kind of economic activity; this tax is relevant for persons acting in housing selling and/or rent services market).

The value added tax was harmonised according to the program of the Lithuania's preparation for the membership in the European Union prepared by the Government of Lithuania and approved by the governmental Commission for European Integration. The law on the value added tax was prepared according to the provisions of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes. The law on the profit tax was also harmonised with the Directives regulating elements of the profit tax.

In the law on the real estate tax and in the law on the personal income tax there are only few provisions of the European Union taxes regulation because the regulation of the these types of taxes are attributed to the national competence. The European Union only requires that in these laws must be established the one of the main European Union's principles – the non-discrimination principle.

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<sup>204</sup>Stačiokas R., Rimas J. "Mokesčiai: Teorija ir praktika". Technologija, P. 99, (Kaunas, 2004).

- energy saving rules

The energy policies affect housing in the spheres of the energetic usefulness requirements of the dwellings, requirements for the dwellings modernization, etc.

The Lithuania in the energy saving regulation sphere follows European union directives (Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings; Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market; Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services; etc.). Regulations are applied directly (for example Commission Delegated Regulation (EU) No 244/2012 of 16 January 2012 supplementing Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings by establishing a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements; Guidelines accompanying Commission Delegated Regulation (EU) No 244/2012)<sup>205</sup>.

The regulation of the directives is transferred by the national legislation. For example, the requirements of the energy-saving are set in the Law on the construction of Lithuania. The law states that all new dwellings and dwellings which are in the process of modernization must meet the requirements of the category of the appropriate energetically usefulness.

- private international law including international procedural law

The main rules of the application **of the private international law** are established in the CC. In the housing relations the most relevant private international law rules are rules applicable to contractual obligations. The Article 1.37 of the CC establishes that contractual obligations shall be governed by the law agreed by the parties. It should be noted that the law applicable for the contractual relationships is identified by the rules of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

**The international procedural law** regulates the questions of the civil procedure when there is a foreign element: the questions of the international jurisdiction, of the delivery of the documents and of the gathering of the evidences in international civil procedure, etc. For example, if the lessee is an foreigner and where is an dispute with the lessor, the dispute's jurisdiction will be established according the CCP of Lithuania and the Council Regulation (EC) no 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

- anti-discrimination legislation

Lithuania applies the provisions of anti-discrimination directives of the European Union: of the directive 76/207/EEC on the implementation of the principle of equal treatment for

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<sup>205</sup>About energy saving please see the homepage of the Ministry of Energy (in Lithuanian): <[http://www.enmin.lt/lt/activity/veiklos\\_kryptys/energijos\\_efektyvumas/aktai.php](http://www.enmin.lt/lt/activity/veiklos_kryptys/energijos_efektyvumas/aktai.php)> (last visited 24 Apr. 2013).

men and women as regards access to employment, vocational training and promotion, and working conditions; of the directive 2000/43/EC on anti-discrimination; of the directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services; of the directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

- constitutional law affecting the EU and the European Convention of Human Rights

The human right to adequate housing is enshrined in international law. The right to adequate housing can be traced to the Universal Declaration of Human Rights.

A key component of this right is habitability of housing, which should comply with health and safety standards. Therefore, the right to adequate housing provides an additional tool for advocates and others interested in promoting healthful housing and living conditions and thereby protecting individual and community health<sup>206</sup>.

For instance, the Article 25(1) of the Universal Declaration of Human Rights states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

The protection of the right to adequate housing enshrined in the Universal Declaration of Human Rights applies to every state. Not only does the declaration define the human rights that all members of the United Nations are bound to promote, respect, and observe, but the declaration itself has ripened into customary international law, and thus is applicable to even those states that are not members of the United Nations.

Lithuania has incorporated housing rights into its national constitution and has not only fulfilled its respective international legal obligations but also has created domestic legal system that empower individuals and groups in ways that allow them to enforce their rights to housing.

- harmonisation and unification of general contract law

The harmonisation and unification of general contract law are prosecuted by the International Institute for the Unification of Private Law (Unidroit). UNIDROIT has prepared the Principles of International Commercial Contracts (editions of 1994, 2004, 2010). Lithuania became a member of UNIDROIT on 1 January 2007 so in the Lithuania there are applicable the Principles of International Commercial Contracts.

The norms of the new CC, which regulate the general rules of the contract law, were formulated according the mentioned Principles of International Commercial Contracts

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<sup>206</sup>The Human Right to Adequate Housing: A Tool for Promoting and Protecting Individual and Community Health. [Bret Thiele](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447150/), JD. Available at: <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447150/>> (last visited 24 Apr. 2013).

and the Principles of the European Union contract law principles established by the working group leading by the professor O. Lando<sup>207</sup>.

- fundamental freedoms
  - e.g. Austrian discussion on secondary homes; licence to buy house needed?

There are no any special fundamental freedoms on housing in Lithuania.

Various aspects of housing rights are protected in numerous international instruments, including the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child.

These international instruments are recognised and applicable in the Lithuania.

The International Covenant on Civil and Political Rights, article 17(1), protects persons from arbitrary or unlawful interference with their homes. The International Convention on the Elimination of All Forms of Racial Discrimination, article 5(e)(iii), prohibits discrimination on account of race, colour, or national or ethnic origin with respect to the right to housing. Likewise, the Convention on the Elimination of All Forms of Discrimination Against Women, article 14(2)(h), obliges states parties to eliminate discrimination against women in rural areas to ensure that such women enjoy adequate living conditions, particularly in relation to housing.

The Convention on the Rights of the Child, article 27(3), obliges state parties to provide, in cases of need, material assistance and support programs, particularly with regard to housing, while the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 43(1)(d), provides that “migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to access to housing, including social housing schemes, and protection against exploitation in respect to rents.” Other international instruments guaranteeing housing rights include various International Labour Organization conventions and humanitarian law instruments.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), however, provides the most advanced international standard protecting housing rights. Article 11(1) of the ICESCR states. The ICESCR provided a more precise meaning of the right to adequate housing as expressed in article 11(1) with the adoption of General Comment No. 4 in 1991<sup>208</sup>. The 7 components of the right to adequate housing

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Principles of European Contract Law. Available at: [http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law/](http://frontpage.cbs.dk/law/commission_on_european_contract_law/) (last visited 6 May 2013).

<sup>208</sup>Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.

articulated in General Comment No. 4 are legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. The habitability and accessibility components touch most closely on the issue of health. The former requires that housing provide shelter from threats to health as well as disease vectors. The latter mandates that adequate housing be made accessible to persons with disabilities, including the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, and the mentally ill.

With respect to the health aspects of housing, General Comment No. 4 provides the clearest articulation of the minimum requirements necessary for housing to be considered adequately protective of health. Furthermore, states parties to the ICESCR are legally obligated to respect, protect, and fulfill these requirements. One such requirement is that housing must be habitable, which includes “providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.” Additionally, in explaining the habitability requirement, General Comment No. 4 expressly encourages states parties to the Covenant to “comprehensively apply the Health Principles of Housing prepared by the World Health Organization which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses.”

The Health Principles of Housing elaborates 6 major principles governing the relationship between housing and health: (1) protection against communicable diseases; (2) protection against injuries, poisonings, and chronic diseases; (3) reducing psychological and social stresses to a minimum; (4) improving the housing environment; (5) making informed use of housing; and (6) protecting populations at risk. The first 2 principles are particularly relevant to health. The first stresses that the following conditions are necessary to ensure adequate housing: safe water supply; sanitary disposal of excreta; disposal of solid wastes; drainage of surface water; personal and domestic hygiene; safe food protection; and structural safeguards against disease transmission. The second addresses construction materials and techniques as well as structural safety, including ventilation and light, and suggests that the physical dwelling must be such that inhabitants are not exposed to dangerous conditions or hazardous substances.

## **7.2. EU policies and legislation affecting national housing law**

- EU social policy against poverty and social exclusion

In Lithuania applicable instruments of EU social policy against poverty and social exclusion related with housing, are mentioned in the part (a). These instruments are affecting national tenancy laws in such a way that it was adopted the Law on the

Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania which is designated to improve the housing conditions of the low income people by the social housing rent.

- consumer law and policy

The CC is combined with the Directive concerning unfair commercial practices.

In these cases when the lessor is natural or legal person and the dwellings rent is his business a consumer shall have the right to claim within the judicial procedure for invalidity of conditions in a consumer contract that are contrary to the criterion of good faith (Article 6.188 CC). These rights of the consumers are also defended in the Law on the protection of the consumers' rights of Lithuania.

- competition and state aid law

The Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty is important in the cases of the commercial activities of housing: its provisions regulate the actions of commercial tenants in the market and protect fair competition.

- tax law

How it was mentioned above Lithuania has harmonized EU taxation law with the Lithuanian tax legislation. Thereby European Union tax law affects national tenancy regulation in such a way that according the European Union regulation were established taxes for commercial rent activity:

(i) the lessor who got the income from the commercial rent, must pay the profit tax;

(ii) the lessor who got the income from the commercial rent, must pay the personal income tax;

(iii) the lessor who got the income from the commercial rent, must pay the value added tax.

- energy saving rules

The Lithuania applies the European Union's directives and regulations of energy saving and the leased dwelling must correspond that rules of energy saving.

- private international law including international procedural law

The rules of the application of **the private international law** affect the tenancy law in such a way that these rules indicate the cases when for the lease contract is applicable the foreign law.

**The international procedural law** regulates the questions of the civil procedure when where is a foreign element: the questions of the international jurisdiction, of the delivery of the documents and of the gathering of the evidences in international civil procedure, etc. anti-discrimination legislation

In Lithuania there are recognized national and European Union antidiscrimination issues by restricting on choice of the tenant.

- constitutional law affecting the EU and the European Convention of Human Rights

In terms of the influence of the ECHR, it could be said that the Constitution of Lithuania (Article 24) guarantees the right of dwelling immunity (inviolability), i.e. it does not directly include the right for dwelling. Article 52 guarantees the social support of the State. It could be said, that the right for dwelling is the derivative right from the rights indicated in the Constitution of Lithuania.

- harmonisation and unification of general contract law

The Principles of International Commercial Contracts are applicable in negotiating commercial rent contracts.

- fundamental freedoms

- e.g. Austrian discussion on secondary homes; licence to buy house needed?

Fundamental freedoms related to the national tenancy laws in the case of commercial housing lease are the lease's freedom to take a rent and the lessor's freedom to refuse to conclude the rent contract except the refusing for anti-discriminating conditions.

In the case of social housing the main fundamental right is the lease's right to obtain dwelling.

### 7.3. Table of transposition of EU legislation

#### EU policies and legislation affecting national housing policies

	Dwelling rent without a public task	Dwelling rent with a public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
EU social policy against poverty and social exclusion	In Lithuania are applicable these instruments of EU social policy against poverty and social exclusion related with housing:  (i) the European Social Charter; make the price of housing accessible	In Lithuania are applicable these instruments of EU social policy against poverty and social exclusion related with housing:  (i) the European Social Charter; make the price of housing accessible	The same regulation

	<p>to those without adequate resources);</p> <p>(ii) the European Code of Social Security;</p> <p>(iii) the Convention on the Rights of Persons with Disabilities;</p> <p>(iv) the Convention on the Rights of the Child.</p>	<p>to those without adequate resources);</p> <p>(ii) the European Code of Social Security;</p> <p>(iii) the Convention on the Rights of Persons with Disabilities;</p> <p>(iv) the Convention on the Rights of the Child.</p>	
Consumer law and policy	<p>In Lithuania the main EU legislation's document concerning the consumer law and policy is the Directive concerning unfair commercial practices. This Directive is important talking about commercial activities of housing.</p>	<p>In Lithuania the main EU legislation's document concerning the consumer law and policy is the Directive concerning unfair commercial practices. This Directive is important talking about commercial activities of housing.</p>	The same regulation
Competition and state aid law	<p>The Law on the competition of Lithuania is prepared according the provisions of the Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. This Council Regulation</p>	<p>The Municipalities which is providing social housing rent are not assessed like entities which are providing commercial rent services.</p>	<ol style="list-style-type: none"> <li>1. Dwelling rent without public task</li> <li>2. Dwelling rent with public task</li> </ol>



	is important in the cases of the commercial activities of housing.		
Tax law	<p>Lithuania absorbed the rules and provisions of the tax regulation of the European Union.</p> <p>These provisions are relevant in the cases of the commercial housing rent.</p>	The harmonized provisions of the tax law are not relevant for the Municipalities because they do not exercise commercial housing rent.	<p>1. Dwelling rent without public task</p> <p>2. Dwelling rent with public task</p>
Energy saving rules	These rules are harmonized with European union requirements.	These rules are harmonized with European union requirements.	The same regulation
Private international law including international procedural law	<p>The main rules of the application of the private international law provide the cases when the foreign law should be applied.</p> <p>It especially is important in the cases of commercial housing rent.</p> <p>The international procedural law regulates the questions of the civil procedure when where is an foreign element:</p>	<p>The main rules of the application of the private international law provide the cases when the foreign law should be applied.</p> <p>It especially is important in the cases of commercial housing rent.</p> <p>The international procedural law regulates the questions of the civil procedure when where is an foreign element: the questions of the international jurisdiction, of the</p>	The same regulation

	the questions of the international jurisdiction, of the delivery of the documents and of the gathering of the evidences in international civil procedure, etc.	delivery of the documents and of the gathering of the evidences in international civil procedure, etc.	
Anti-discrimination legislation	<p>Lithuania applies the provisions of anti-discrimination directives of the European Union.</p> <p>The main are provisions of anti-discrimination in selection of the leases.</p>	<p>In the case of social housing rent the restrictions on choice of tenant and antidiscrimination issues are not such relevant as in the case of housing rent without public task, because the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania establishes the indirect obligation of Municipalities, landlords of dwellings, to enter in to a rental contract with a person who meets the requirements set in the law, i. e. the lessor cannot assess the lessee's personal and financial characteristics which are not indicated in this</p>	<ol style="list-style-type: none"> <li>1. Dwelling rent without public task</li> <li>2. Dwelling rent with public task</li> </ol>

		special law.	
Constitutional law affecting the EU and the European Convention of Human Rights	Lithuania has incorporated European Convention of Human Rights provisions into its Constitution.	Lithuania has incorporated European Convention of Human Rights provisions into its Constitution.	The same regulation
Harmonization and unification of general contract law	General rules of Lithuanian contract law are based on UNIDROIT Principles and Principles of European Contract law.	General rules of Lithuanian contract law are based on UNIDROIT Principles and Principles of European Contract law.	The same regulation
Fundamental freedoms	The right to the adequate housing	The right to the adequate housing	The same regulation

### EU policies and legislation affecting national housing law

	Dwelling rent without a public task	Dwelling rent with a public task	Ranking from strongest to weakest regulation, if there is more than one tenancy type
EU social policy against poverty and social exclusion	The instruments of EU social policy against poverty and social exclusion related with housing are not relevant in the cases of the commercial housing rent.	The Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania is designated to improve the housing conditions of the low income people by the	1. Dwelling rent with public task 2. Dwelling rent without public task

		social housing rent.	
Consumer law and policy	<p>The CC is combined with the Directive concerning unfair commercial practices.</p> <p>So the contracts of rent could not have the unfair conditions.</p>	<p>The CC is combined with the Directive concerning unfair commercial practices.</p> <p>So the contracts of rent could not have the unfair conditions.</p>	The same regulation
Competition and state aid law	<p>The Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty is important in the cases of the commercial activities of housing: its provisions regulate the actions of commercial tenants in the market and protect fair competition.</p>	<p>The Municipalities which is providing social housing rent are not assessed like entities which are providing commercial rent services.</p>	<p>1. Dwelling rent without public task</p> <p>2. Dwelling rent with public task</p>
Tax law	<p>European Union tax law affects national tenancy regulation in such a way that according the European Union regulation were established taxes for commercial rent activity</p>	<p>The harmonized provisions of the tax law are not relevant for the Municipalities because they do not exercise commercial housing rent.</p>	<p>1. Dwelling rent without public task</p> <p>2. Dwelling rent with public task</p>
Energy saving	The Lithuania applies the	The Lithuania applies the	The same

rules	European Union's directives and regulations of energy saving and the leased dwelling must correspond that rules of energy saving.	European Union's directives and regulations of energy saving and the leased dwelling must correspond that rules of energy saving.	regulation
Private international law including international procedural law	<p>The rules of the application of the private international law affect the tenancy law in such a way that these rules indicate the cases when for the lease contract is applicable the foreign law.</p> <p>The international procedural law regulates the questions of the civil procedure when where is an foreign element: the questions of the international jurisdiction, of the delivery of the documents and of the gathering of the evidences in international civil procedure, etc.</p>	<p>Theoretically the rules of the application of the private international law affect the social housing in such a way that these rules indicate the cases when for the lease contract is applicable the foreign law. But in the practice of the social housing such cases are little reliable.</p> <p>The international procedural law regulates the questions of the civil procedure when where is an foreign element: the questions of the international jurisdiction, of the delivery of the documents and of the gathering of the evidences in international civil procedure, etc.</p>	The same regulation
Anti-discrimination legislation	In Lithuania there are recognized national and	In the case of social housing rent the restrictions on	<p>1. Dwelling rent without public task</p> <p>2. Dwelling rent</p>

	European Union antidiscrimination issues by restricting on choice of the tenant.	choice of tenant and antidiscrimination issues are not such relevant as in the case of housing rent without public task, because the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania establishes the indirect obligation of Municipalities, landlords of dwellings, to enter in to a rental contract with a person who meets the requirements set in the law , i. e. the lessor cannot assess the lessee's personal and financial characteristics which are not indicated in this special law.	with public task
Constitutional law affecting the EU and the European Convention of Human Rights	The Constitution guarantees the social support of the State. It could be said, that the right for dwelling is the derivative right from the rights indicated in the Constitution of	The Constitution guarantees the social support of the State. It could be said, that the right for dwelling is the derivative right from the rights indicated in the Constitution of	The regulation same

	Lithuania.	Lithuania.	
Harmonization and unification of general contract law	General rules of Lithuanian contract law are based on UNIDROIT Principles and Principles of European Contract law.	General rules of Lithuanian contract law are based on UNIDROIT Principles and Principles of European Contract law.	The same regulation
Fundamental freedoms	Fundamental freedoms related to the national tenancy laws in the case of commercial housing lease are the lease's freedom to take a rent and the lessor's freedom to refuse to conclude the rent contract except the refusing for anti-discriminating conditions.	In the case of social housing the main fundamental right is the lease's right to obtain dwelling.	1. Dwelling rent without public task 2. Dwelling rent with public task

## 8. Typical national cases (with short solutions)

### 8.1. "The capital repair"

*Situation:* the lessee interrupted the lease contract before the term, because the lessor did not perform the capital maintenance. The lessor applied to court affirming that the interruption of the lease contract is unlawful because the lessee interrupted the contract ex-parte.

*Solution:* the lessee's right to request the court to terminate the lease before the term rule settled in the Article 6.498 of the CC is not mandatory, it finds only possible, because the request to terminate the fixed term lease only by court order would be contrary to the contractual freedom.

*It should be noted that* according the Article 6.498 of the CC the lessee shall have the right to terminate a contract if the lessor fails to carry out the repair he is obliged to because under the Article 6.492 of the CC The lessor shall be obliged to make capital repair at his own expense of the leased thing unless otherwise provided for by laws or the contract.

## 8.2. “The outsider man in the rent dwelling”

*Situation:* the lessor (the Municipality) applied to court asking to interrupt the social housing lease contract and to evict the lessee and her infant son, because in the leased social flat dwelled outsider man.

*Solution:* the social housing lease contract can be interrupted only according the special conditions and first of all it must be considered the infant child interests. In this case it was executed the breach of contract but according the interest of her infant son they cannot be evicted.

*It should be noted that* according the Part 1 of the Article 6.588 of the CC member of the lessee’s family is the spouse or cohabitant and under the Part 2 of the Article 6.590 of the CC the lessee of a state or a municipality dwelling or the members of his family of full age shall have the right upon the consent of other family members of full age to house in the dwelling the spouse (cohabitant).

## 8.3. “The duty to pay rent”

*Situation:* the lessor (the Municipality) applied to court asking to interrupt the social housing lease contract and to evict the lessee, because she did not pay the rent and communal taxes.

*Solution:* the social housing lease contract can be interrupted only after assessed the unit of all factual circumstances: the lessee’s social status (property status, age and possibilities for improving the material condition of household behaviour, minors and other incapacitated person's maintenance); the lessee’s debt situation (debt build up time, size reasons), the debtor's efforts to improve the financial status and ability to repay the debt, lease termination and eviction effect (the debtor potential availability of other dwelling, minor children, and other support people in need of housing loss and other negative consequences). Only the non-payment of rent in the social housing cases cannot be the condition to evict the person from social dwelling.

*It should be noted that* in this case the Article 6.611 of the CC could be applicable.

In the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided. In the event where the lessee, his family members or other persons residing together with him create by their improper behaviour such conditions, which render it impossible for other persons who reside together or in the neighbourhood to lead normal life, they may be evicted upon the request of the lessor or the latter persons without other dwelling being provided.

## 8.4. “The requirements for interruption of the social housing lease contract”



*Situation:* the lessor (the Municipality) applied to court asking to interrupt the social housing lease contract and to evict the lessee, because he did not pay the rent and communal taxes.

*Solution:* social housing contract cannot be terminated merely stated the fact that the tenant did not pay rent or a tax on utility services. The Municipality, seeking to evict a tenant from public housing because of non-payment of rent, must to prove that such non-payment is not a result of the difficult financial situation of the tenant that he or she is unable to change, but it is the abuse of social benefits and conscious avoidance of their own to secure the material minimum which is sufficient to pay the rent.

*It should be noted that* in this case the Article 6.611 of the CC could be applicable.

In the instances where the lessee regularly (at least for three months unless a more extended period is provided for in the contract) fails to pay the lease payment or the payment for public utility services, if the lessee, his family members or other persons residing together with him destroy or damage the dwelling or use it for other than its designation, the contract of lease may be dissolved and the persons concerned evicted from the dwelling without other dwelling being provided. In the event where the lessee, his family members or other persons residing together with him create by their improper behaviour such conditions, which render it impossible for other persons who reside together or in the neighbourhood to lead normal life, they may be evicted upon the request of the lessor or the latter persons without other dwelling being provided.

#### **8.5. “The mandatory requirements to get social housing”**

*Situation:* the demandant applied to court asking to recognize him as the lessee of the Municipality's apartment and to commit the Municipality to conclude with him termless lease contract.

*Solution:* although the demandant's family meets legal requirements and are eligible for social housing, but its right for social housing was realized by breaching the statutory procedures for social housing: arbitrarily moved into apartment, disregard for social housing premises and the absence of a written lease agreement with the Municipality. On the other hand, the fact of the illegal occupation of apartment does not constitute grounds to evict the demandant from the occupied space. It is necessary to take into account the demandant's settlement's in social housing circumstances, the period during which the demandant lives in apartment, the demandant's behaviour, wealth, access to housing and the Municipality's, as a social landlord, behaviour by administering such housing. Since the demandant and his family members repaired, supervised the apartment, concluded contracts with utility companies providing communal services and paid taxes, kept an apartment in their home, and do not have other residential premises, while the Municipality had long resisted take legal action in their capacity as owners to defend its rights the demandant's claim must be pleased.

*It should be noted that* in such cases the question is the person can demand of the court to commit the Municipality to conclude the dwelling's rent contract with him. Such commitment contradicts with the principle of the contract freedom but there it must be considered the special provisions of the Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization) of Lithuania. Whereas the law establishes that the social dwelling rent contract could be concluded with the person who meets special requirements, the court cannot to commit the Municipality to conclude the social dwelling rent contract with person who does not meet such requirements.

#### **8.6. "The consequences of the lessee death"**

*Situation:* the Municipality applied to court asking to evict from Municipality's apartment persons who lived with apartment's lessee and required to conclude with them lease contract after the legal lessee death considering the facts that they have concluded the lease contract with deceased lessee, have made the apartment maintenance and have paid taxes.

*Solution:* illegally lease contract with the former apartment tenant cannot justify the right to housing; the maintenance of apartment was made at their own risk; utilities payments are estimated as a payment for services rendered, and the eviction is considered as a proportional and reasonable measure.

#### **8.7. "Housing lease contract vs loan for use agreement"**

*Situation:* the demandant applied to court asking to recognize the fact that he and the defendant have made lifelong housing lease contract. The defendant asked to interrupt before the term the contract of loan for use of the apartment.

*Solution:* the relationships between the demandant and the defendant are considered as loan for use relationships. Although the agreement is called „a dwelling lease agreement“, but by its nature it is a loan for use agreement, because the defendant allowed the demandant to live without paying rent, and the lease and loan for use agreement's essential difference is that the loan for use contract is free of charge.

#### **8.8. “The increase of the rent payment”**

*Situation:* the lessor (the Municipality) applied to court asking to adjudge from the lessee the debt of rent which came after the increase of the rent payment.

*Solution:* the rent payment for the social housing can be increased only according the laws and the orders of the Government. The Municipality does not have right to increase or reduce the social housing rent payment. Therefore the Municipality cannot require that the lessee pay this unlawful increased rent payment.

#### **8.9. “The improvements of apartment**

*Situation:* the lessee has replaced the windows during the lease period without the lessor agreement. At the end of the lease agreement the lessee demanded compensation of the expenses. The lessor refused to pay such compensation.

*Solution:* the lessee who did not get the accord of the lessor for apartment's improving and did not give for the lessor any notice before such improvements was acting in own risk and the lessor has not any duty to pay lessee's expenses.

*It should be noted that* under the Article 6.605 of the CC the lessee of a dwelling of state, municipalities and legal persons and his family members may modify and change the plan of the dwelling and non-residential premises only upon written permission of the lessor and the consent of the family members of full age residing together, likewise upon that of any other interested persons whose rights and lawful interests may be violated in the course of executing modification and change of plan of the dwelling and non-residential premises. In the event of disagreement between the lessee, his family members and other interested persons, the dispute may be resolved within judicial proceedings.

#### **8.10. “The payment – the one main element of the lease contract”**

*Situation:* after the ending of lease agreement the lessee continued to use the apartment without either party declarations and without paying the rent. The lessee applied to the court asking to retrain the lease contract to the loan for use contract.

*Solution:* the lease contract must be considered as the loan for use contract because there is no longer of the one main element of the lease contract – the payments.

*It should be noted that* in this case it should be the Article 6.481 of the CC: a contract of lease shall be considered to become concluded for an indefinite period

where the lessee continues to use the property for more than ten days after the expiry of the period of the contract without any opposition from the lessor.

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### 9.3 Abbreviations

**ALAL** – Association of Local Authorities in Lithuania

**CC** – the Civil Code of the Republic of Lithuania

**CCP** – the Code of Civil Procedure of the Republic of Lithuania

**LBNP** – Law on the bankruptcy of natural persons of the Republic of Lithuania

**Law on state support** – Law on the Lithuanian state support for housing purchase or lease and apartment buildings renovation (modernization)

**NGO** – Lithuanian Chamber of Housing Management and Maintenance

**Treaty** – the Treaty on the Functioning of the European Union