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**A COMPARATIVE ANALYSIS OF ESTONIAN AND GERMAN
LEGISLATURE REGARDING BROKERAGE CONTRACTS**

Bachelor's thesis

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I hereby declare that I have compiled the thesis/paper independently and all works, important standpoints, and data by other authors have been properly referenced and the same paper has not been previously presented for grading. The document length is 11 343 words from the introduction to the end of the conclusion.

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INTRODUCTION

The aim of this bachelor's thesis is to provide a comparative overview of German and Estonian law, while discussing the essence of the trade of a real estate broker. The author discusses the nature of Estonian regulations which govern the basics of a real estate agent contract and provides an overview of German laws regulating the topic, while providing the history and current status of these acts. Moreover, a comparative analysis is conducted by comparing the legislature of both these countries, and a proposition to improve Estonian legislative acts in the topic is given. The hypothesis of this thesis is that Estonian legislature regarding brokerage law, more specifically real estate broker contracts, is not sufficiently regulated, and could be improved by using the examples provided by German law. When concluding the research, German legislation is used as the main comparison and example, due to the relevant change in legislation adopted by Germany in recent years. The author has also discussed how several other states have regulated this field and topic with the purpose of ensuring versatility in the examples and about the topic. The research has been conducted by using comparative methods by comparing the laws implemented in different countries, and analytical methods by analysing the provided laws, regulations and scientific articles. The author has formed a conclusion based on the analysis carried out, which has been then used for shaping a proposition for implementing the findings of this thesis into Estonian legislation. This thesis provides an overview of the laws and regulations governing purchasing and selling of property only and does not analyse the topic of renting or leasing of property.

The topic of the real estate market is very relevant due to the nature of real estate being one of the most important assets in a state's economy, and with real estate transactions unlikely to cease in a capitalist market. In parallel, as the real estate economy is at an uncertain state at the time of composing this thesis, it can be derived that real estate brokers may be of higher importance in contrast to the state of the market in the recent years, due to the need for more assistance of experts for the participants of real estate transactions. The aforementioned provides an overview of why the author believes that more extensive regulation of this sector needs to be discussed and has chosen this topic as the basis of this bachelor's thesis.

The author's hypothesis is that in Estonia, there aren't enough qualifications and standards which need to be met by real estate brokers for a person to become a professional real estate broker. The Estonian Chamber of Estate Agents (EKMK) creates a standard among real estate agents by

requiring a certain qualification among its members to be an official member, however a part of obtaining this qualification is the prerequisite of two years of professional experience as a real estate agent, which eliminates the possibility of a real estate broker to have official qualifications in the starting years of their career. Therefore, the author discovers some methods implemented in other countries and discusses the applicability of them into Estonian law, and furthermore, the potential and theoretical benefits of implementing such proposals into legislation.

This thesis is comprised of an overview of Estonian laws and regulations, discussions of the essence of brokerage contracts, including the obligations, requirements and rights of the estate broker and the seller of property, the methods of payment for the services of the broker, and some overall issues which are reflected in Estonian law and the field of real estate transactions. Following, a similar overview has been conducted of German law, by discussing the history, current state and application of law, and the stimulus for using German law as the main example in this thesis. An overview of new aspects that were introduced to Germany in the recent years is provided, along with the reasoning of why these changes were implemented by the state. Additionally, some other countries have been included in the fourth chapter, which shows the regulations in the United States, Norway, Sweden, the Netherlands, and Belgium. Furthermore, a comparison between Germany and Estonia has been conducted, which illustrates the main differences and similarities between these countries, and an analysis is provided based on the chapters preceded to the analysis. Finally, a proposition is made, which provides the author's propositions concluded on analysis of the findings.

1 ESTONIAN LAW

1.1 General overview of Estonian law

In Estonia, brokerage contracts are regulated by the Law of Obligations Act, which also provides the definition of a brokerage contract. According to the § 658, a brokerage contract is when “one person (the broker) undertakes to act as an intermediary for another person (the mandator) who enters into contracts with third persons or to indicate to the mandator opportunities for entering into contracts with third persons, and the mandator undertakes to pay a fee (a brokerage fee) for such activities to the broker¹”. According to the definition, a real estate broker undertakes to provide services of acting as an intermediary to the mandator or the owner of property in exchange for a fee. The legislation in force, however, does not fully define the nature of the real estate broker and does not provide any requirements for the broker, therefore any natural person can act as a real estate agent in Estonia.

1.2 Brokerage contracts

Estonian law does not require the existence of a contract between a broker and the owner of property to be concluded in written form in order a contract to be valid or enforceable. However, the formation of a contract in written form is highly suggested² in order to prevent disputes and should be formed mainly in order to protect the real estate agent from the seller’s potential false claims for the fee from the sale of property.

1.2.1 Obligations of broker and seller

The broker has several obligations, which are regulated by Chapter 37 of the Law of Obligations Act of Estonia by paragraphs § 658-669. According to § 658 of the Law of Obligations Act of Estonia³, the provisions regulating authorisation agreements also apply to brokerage contracts, which are regulated by Chapter 35 of the Law of Obligations Act of Estonia. The brokerage contract is a unique agreement, which does not require services to be finalised in order for the

¹ VÕS RT I, 01.01.2022, 37, § 658

² Varul, P.; Kull, I.; Kõve, V.; Käerdi, M.; Sein, K. (2016). Võlaõigusseadus I. Kommenteeritud väljaanne. Tallinn: Juura, Õigusteabe AS

³ VÕS RT I, 01.01.2022, 37, § 658

contract to become effective, but the agent must do everything in their capabilities to find a party with whom the mandator can form a sales contract with⁴, while in parallel, having the best interests of the mandator in mind.

According to § 662-663⁵, the broker has an obligation to preserve the documents related to the professional activities of the broker for as long as these documents are relevant to protect the interests of a mandator, and the obligation to maintain records which concern contracts, such as where the broker acts as an intermediary or to which the broker refers a party to the mandator. If the parties do not enter into a contract in writing, the broker shall immediately, at the request of the party to the contract for whom the broker acts as an intermediary or who was referred to the contract by the broker, present an extract signed by the broker which sets out the terms and conditions of the contract.

1.2.2 Payment for services

Real estate broker's right to payment for services is regulated by § 664 of the Law of Obligations Act of Estonia. This paragraph provides that the real estate broker has a right for payment for their services in case of transaction of sale of property from the person they concluded the brokerage contract with, in case of all requirements of the contract having been met by both parties. The broker also has a right for their expenses related to the service to be reimbursed by the seller if the parties had previously regulated it in the brokerage contract, but such an act is not viewed as common practice in the Estonian real estate market. The payment for services to the real estate broker is the obligation of the buyer of property and is usually considered a part of the purchase price of property being sold and is not discussed with the buyer of property. The size of payment considered to the real estate agent ranges usually from 2-5% of the price of property in the Estonian real estate market, which depends on the state of the market and the purchase price of the property.

1.2.3 The issues in Estonian law regarding brokerage contracts

Research has been conducted in Estonia several times to illustrate the regulations in the real estate profession field and to provide conclusions on the topic. Such studies have mostly raised and proved hypotheses that Estonian law regarding real estate brokers is under regulated⁶, and all

⁴ Varul, P.; Kull, I.; Kõve, V.; Käerdi, M.; Sein, K. (2016). *Võlaõigusseadus I. Kommenteeritud väljaanne*. Tallinn: Juura, Õigusteabe AS

⁵ VÕS RT I, 01.01.2022, 37, § 662-663

⁶ Reino, N. *Kinnisvaramaakleri kutsetegevuse regulatsioon Eestis*. 2015. Tallinna Tehnikaülikool.

parties involved in real estate transactions could benefit from further regulation from lawmakers⁷. However, further regulations have not been implemented, and the author has not found information, whether the Estonian lawmakers have taken the necessity for improvement in this field into discussion.

The EKMK, as the only organisation which regulates qualifications of real estate agents in Estonia, has stated that enhancing the reputation of real estate agents is a demanding problem professional and qualified real estate agents must face, due to lack of regulations in the field and lack of action by the state. They have also brought out that using other countries, which have implemented stricter regulations in that field, as positive examples would affect the Estonian real estate agents' reputation as a collective and additionally increase the quality of service⁸.

An issue which has also risen from the brokerage contracts in legal practice is the lack of specification of brokerage fees in contracts. For example, as some brokerage contracts have been concluded with a specific price point, and in instances where the broker has provided the mandator with a buyer who is willing to pay less than the amount specified in the brokerage contract and the transaction of sale of property has been concluded, the mandator might have not claimed the brokerage contract effective and might have refused to fulfil their obligation for payment to the broker. However, these instances have been regulated by the courts as not rightful and have granted rights for payment for services to the brokers. Such instances can be found in cases such as the Court of Appeal judgment 2-18-1521⁹, and in a Supreme Court judgment 2-20-331¹⁰. The courts clearly found that in case of the transaction of sale of the property with purchase price being less than provided in the brokerage contract, the obligations of the real estate broker were met, and the broker had a claim for payment. The courts also provided that special instances, such as varying from the original price of property, should be regulated in the real estate brokerage contract, in order to avoid possible disputes. Therefore, it could be argued that further regulation of the necessities of a valid real estate contract may potentially reduce court disputes and provide more legal protection to the parties involved in the transaction.

⁷ Villemson, K. Kinnisvaramaaklerite teenuse standardiseerimine ning maakleritele esitatavad haridusnõuded, mõju teenuse kvaliteedile. 2014. Eesti Maaülikool.

⁸ Maakleriteenuse riiklik kontroll - utopia või paratamatus (Sandra Metsa 2018, EKMK)

⁹ TlnRnKo 2-18-1521

¹⁰ RKTko 2-20-331

1.3 Risks which arise from unlicensed real estate brokers

According to a research paper published in 2014, market efficiency is obtained by the collaborative and intertwined actions of consumers and firms. Lack of information about certain aspects of the market or the correct implementation of the law in certain trades create barriers between buyers and sellers, which then reduces market efficiency. Real estate agents act as intermediaries in the market, while transferring information to the uninformed side of the market (the buyers) and create a passage between buyers and sellers of real estate. Should the real estate agent lack information to provide to the buyer or seller, market efficiency becomes difficult to achieve. Therefore, it is apparent that in order to not create barriers in the real estate market, the intermediary (the real estate agent), must be informed and hold sufficient knowledge in order to provide professional assistance to both parties of the transaction of property sale¹¹. Therefore, in order to not create a negative association to the profession within a community by damaging the reputation of a career path, and to encourage the growth and efficiency of the real estate market, a person who acts as a real estate agent should educate themselves entirely about aspects that are expected of a person in that position. Furthermore, it can be argued that if the state would implement prerequisites such as certain qualifications for persons acting as real estate agents, the real estate market as a whole may benefit from such requirements.

For a contract to be valid, both parties must be fully informed on the details of the transaction. As paragraph 14 (2) of the Law of Obligations Act of Estonia provides, “Persons who engage in precontractual negotiations or other preparations for entering into a contract shall inform the other party of all circumstances with regard to which the other party has, based on the purpose of the contract, an identifiable essential interest.” Therefore, the person who acts on behalf of the seller as a real estate agent is obligated to provide essential information about the wide range of topics. These topics may consist of and are not limited to:

- information about legal documentation regarding the property and necessary due processes when purchasing real estate;
- anti-money laundering laws and contractual details;
- informed knowledge of notary processes;
- information about risks and obligations of entering into a binding contract governed by property law;

¹¹ Dilek, S. Impact of estate agents on market and the relationship with experience. 2014, Czech Republic, Business and Economic Horizons

- rights of the buyer of property;
- economic status and pricing of property according to market value;
- construction details and potential flaws about the object of interest which may legally require disclosure by the seller;
- materials used in the construction process, cost effectiveness of these materials, potential longevity of these materials;
- legal documentation, such as usage licence, building licence, information about servitudes, history of the property and potential duties which are accompanied with historical objects, such as heritage conservation and protection obligations.

It has been discussed in a *Juridica* article published in 2021¹², that the seller of the property bears the risk of providing incomplete information to the buyer of property, and in case the sale transaction of property has been carried out via broker, the risk falls to the seller of property. Therefore, in case of underqualified estate brokers that do not hold sufficient knowledge of legal and technical requirements that are accompanied by the sale hold a large risk to the seller and the buyer, in the form of potential legal fees, distress and other damages which are accompanied with purchasing property with hidden faults that are legally required for a seller of property to disclose prior to the transaction, such as stipulated in the Law of Obligations Act of Estonia § 217 (2)¹³.

Due to these reasons brought out in this chapter, it can be derived that the risks accompanied with the trade position of a real estate broker can be relatively high to all parties that are connected to the transaction, and misinformation about certain aspects of the transaction and incomplete education or experience may lead to strict penalties and consequences for any party included. Due to the high number of real estate brokers currently active in this trade, it becomes apparent that changes in regulations are necessary for protecting the rights of individuals performing transactions in the real estate market.

¹² Sein, K. „Müüja vastutus lepingutingimustele mittevastava kinnisasja eest. Riigikohtu praktika ja vastutuse välistamise või piiramise võimalused“. *Juridica*, 2021/2, lk 87-100

¹³ VÕS RT I, 17.03.2023, 80, § 271 (2)

2 GERMAN LAW

2.1 General overview

In this chapter, German law is used as one of the sources in the Civil Law system, which is then used for comparison with the Estonian legal system and the chapter of Brokerage Contracts of the Law of Obligations Act of Estonia. This chapter also explains the reasons for bringing out German Law as an influence, its impact on the formation of different countries' legislature, and additionally provides some insight on the creation of Estonian law.

2.1.1 Reasons for choosing German legislature as main comparison

German law is one of the most influential law systems in today's world due to being one of the largest legal systems with the most followers, as it has developed from Roman Law. Estonian legislature has been mainly influenced by German law, as have many other states, such as Greece, Turkey, Switzerland and even France¹⁴. Even though the aforementioned countries' legislation has been influenced by Germany in the past, there cannot be a linear correlation made that these states should find influence in the German Civil Code now as well, as it is clear that states develop their own norms, traditions and legal practice over time, based on the customs and norms of the country. However, it can be argued that the German Civil Code is a very well structured and practical collection of legislation, which has been polished over the years from being implemented in practice for centuries and being corrected and critiqued to a very reviewed and effective system. With globalisation and the emergence of transnational organisations such as the European Union, nations have become more influenced by the actions of other countries, in matters ranging from humanitarian levels to legal matters, in order to showcase solidarity and unison, in addition to better communication and international research methodologies conducted by international organisations.

Throughout history, smaller countries have been influenced by larger countries and their legal systems, when forming their sovereignty and independence. This conduct is very natural, as law implemented in a country is an incredibly complex system and is almost impossible for a set of persons to create without considering examples from other nations. As there are many forms of legal systems in the world, such as the Common Law, Civil Law and Islamic law systems with

¹⁴ Pärnamägi, I (2014) Saksa mõju Eesti õiguses, Õiguskeel 1/2014

various formats all over the world, it would be more difficult for countries to adopt legislation from states with a different legal system, due to a particularly different formation of the law.

2.2 German regulations on real estate brokerage contracts previously and currently

2.2.1 General overview

Until December of 2020, the German civil code provided similar definitions and norms to brokerage contracts as Estonia. However, in December of 2020, an amendment was made to the Civil Code regarding the Brokerage contract chapter, which is discussed in this chapter.

2.2.2 Law before the change

The real estate broker's duties and obligations are regulated in the German Civil Code (BGB), the German Industrial Code (GewO), and the German Brokers' and Commercial Developers' Ordinance (MaBV). Title 10 of the German Civil Code regulates brokerage contracts, without providing the concrete definition to a brokerage contract. Instead, it refers to a contractual obligation that is only applicable if the contract is entered into after the promise of a brokerage fee. Moreover, the definition can be concluded from the Section 652 (1) of the BGB, which provides the following: "A person who promises a brokerage fee for evidence of the opportunity to enter into a contract or for negotiating a contract is obliged to pay the fee only if the contract comes into existence as a result of the evidence or as a result of the negotiation of the broker. If the contract is entered into subject to a condition precedent, the brokerage fee may only be demanded if the condition is fulfilled"¹⁵. So, it can be concluded from this section that the brokerage contract is concluded between two persons, without the mention of any obliged third party, with the addition of not bearing any obligations to perform the acts in order to conduct a contract, but rather it provides the possibility to do so.

2.2.3 Law after the change

As previously discussed, Germany made amendments in the state's legislature which regulated the real estate agent's fees and came into effect from 23 December of 2020.

¹⁵ BGB, 02.01.2022, 10, 652

2.2.4 Creation of the brokerage contract

The contract concluded between the real estate agent and the owner of the property which is intended for sale has been made obligatory between the parties. This means that the contract must be concluded in written form, in contrast to prior regulations, where this was not necessary. Under previous law, there were no obligations for the parties to form a contract, but rather it was recommended, and in case of contract, the form of it was also not regulated, so a verbal contract would have been sufficient for the formation of contract. This form fixes the fee, which is intended for the real estate broker in regard to their service, provides clear proof in case of disputes, and additionally provides an overview of the contract of the agent for the buyer of property.

2.2.5 Payment for services

New obligations have risen for the seller which previously did not exist. The main novel obligation for the seller has become the requirement for the seller to pay at least 50% of the real estate agent's fee in case of a transaction of sale of property to a natural person, on basis of proof that expenditures have been made in the form of payment to the real estate agent for their services. Additionally, a large factor in this scenario is the involvement of the buyer of property in this transaction, as it is now in the interest of both parties to hire a real estate agent who is most cost effective to both parties. In contrast to this regulation, previously the seller of property did not have an obligation to pay the agent commission at all, leaving the obligation in full to the buyer of property. The new addition to the law lessens the burden of cost for the seller and makes the transaction more proportional to both parties. This also provides for competition in the real estate market between different real estate brokers and estate agencies, in contrast to before, when there was no regulation on the price of payment to the broker at all, as it was not in the interest of the seller of property to negotiate a lower price of the real estate agent.

2.3 Reasons for implementing new laws

Change in the law passed by the German government in December of 2020, which regulates real estate agents and the contracts related to the sale of property as discussed in this chapter, were made and passed by the German legislators due to the following reasons, and are not limited to:

2.3.1 Difficulties in purchasing property

Before the change adopted in the BGB, it was reported difficult for potential homeowners to purchase property, because of relatively high commission rates, which had risen to as high as up to 7,14% of the purchase price of property, with addition of taxes, notary fees and land registry fees¹⁶. All these costs accumulate to a high proportion of the property price, which is often purchased with a loan-type agreement, but which does not fully cover the price of other expenditures made, such as the aforementioned fees.

2.3.2 Disproportionate rights

The change was additionally conducted to make unlawful the act of a landlord or seller of property to choose a real estate agent without consulting the buyer, which creates monetary obligations to the buyer, but not for the seller, which moreover deepens inequality between the parties and does not provide a possibility for the buyer to have a say in the size of the real estate broker's commission, as the size of the commission could vary between the agencies. Therefore, it is now in the interests of both parties of the sale contract of property to negotiate the price of real estate agents to be lower.

2.3.3 Increased market values

Additionally, as the market prices for real estate prices have been rising over a short period of time, along with other countries of the European Union, the fees for real estate agents in case of a purchase transaction have been rising as well, which means a higher expense for the seller and buyer of the object, due to the broker's fees being directly linked to the purchasing price of the object. Therefore, the concluded price in case of a transaction accumulated as unproportionally large and dividing the commission between the parties provided a solution to this issue.

2.4 Conclusion on German law

The author finds that the changes in German law discussed in this chapter are proportionate and reflect the practical methods for the creation of this change in law, as these changes provide clear and distinct solutions to the issues which were previously unregulated. The only party who does not benefit from these changes is the selling party of the property, who previously would have not

¹⁶ New German Brokerage Commissions (EverEstate 2022)

been impacted by the real estate agent's commission at all, but who should now provide payment for the transaction as well. However, the author finds the law which was in effect before the year 2020 to be scaled to benefit the seller of property, which can be reflected by the disproportionalities between the beneficiaries of the transaction of sale of property. However, in conclusion, new legislature seems to be more proportionate and does not favour either of the parties, but rather encourages more transactions to be made in the real estate market. Due to these factors, the state is directly supporting the real estate market and benefits the economy of the country.

3 VARIOUS LEGISLATURE

3.1 United States law regarding brokerage contracts

3.1.1 Relevance of United States law

Although the United States belongs to a different legal system than Estonia and Germany, its laws which govern real estate transactions and regulations over real estate brokers can still provide an exemplary overview of a developed system. While different states follow different laws, the fundamental regulations are still rather similar, providing a clear and beneficial structure to the parties involved. The author believes that it is necessary for states to use examples for crafting legislature set out in other countries and analyse the historical aspects, in order to obtain a complex and efficient legal governance over a certain field. Due to the United States being a country with legislature which has been widely academically discussed and analysed, and having a brokerage system which is based on an extensive period of time of practical implementation, it is beneficial to bring out examples to illustrate the possibilities of improving the Estonian legal system regarding the brokerage field. Therefore, taking the previously mentioned aspects into consideration, an overview of the United States legislature is provided in the following chapter.

3.1.2 Historical aspects of brokerage law in the United States

Historically, the system which governs estate brokers today, started to develop in the late 19th century, and was similarly governed as it is today in Estonian legislature. Comparisons include the lack of need for formation of contract between the seller and estate broker, which provided the broker an exclusive right for acting as a sole broker, therefore providing the seller an opportunity to use several estate brokers. The negative issues this system held included complications of real estate transactions, created a negative reputation to real estate practitioners, and held little benefit for the consumer¹⁷. Additionally, this system created an unhealthy competition for the estate agents, which has several negative potential side effects, such as lower quality of service, and lower monetary benefit for the seller due to rushing of the sales process by the estate agent and agreeing to a lower asking price, in order to conclude the transaction and receive payment for it faster¹⁸. However, as these issues became clear, a new system was created by the formation of the

¹⁷ Bayer, S. Reconsidering Dual Agency Conflicts in Residential Real Estate. 2021. Hastings Law Journal, Vol. 72, Issue 2. pp. 663-686.

¹⁸ Korngold, G. Real Estate Brokers Are Not “Fiduciaries”: A Call for Developing a New Legal Framework. 2011. Real Estate Law Journal, vol. 40, no. 3

National Association of Real Estate Exchanges (NAR), which shaped new standards in the field and provided legal oversight for the practitioners. Furthermore, the states became more aware of the need for further regulation in the field, and the Tennessee Real Estate Broker License Act of 1973 was crafted as a first regulatory scheme of the real estate broker licencing. The Act comprised of several parts and was founded on the purpose of prohibiting any person from engaging in the practice of real estate brokerage without a license, without carrying out a single act of brokerage unless licensed¹⁹. Topics to acquire the licence covered business ethics, composition, mathematics, principles of land economics and appraisal, closing statements, mortgages, sales contracts, leases, and other related matters. The necessity for making licencing of real estate agents mandatory became evident also since the need for professionalisation of the trade became evident, otherwise the practitioners would remain as “speculators”, and unprofessional²⁰.

3.1.3 Current regulations for estate brokers in the United States

Contemporary regulations and norms in the field of real estate in the United States are very different from European systems. Practices like dual-agency and payments to the NAR are introduced, but the system itself differs on a core level. For example, the dual-agency system consists of two realtors, both representing the seller and the buyer of property. This, in theory, could provide a better competition system, due to more negotiating parties being at play, but in contrary, both realtors traditionally aim for negotiating the price of purchase to be higher and to start a bidding contest between the prospect buyers, due to the realtors’ payment for service being directly linked to the final sales price of the property. The possibility for the situation to have developed to this level is due to lack of knowledge about the nature of the sales process by the consumers, and due to a high level of competition in the real estate market in the United States²¹. Therefore, the system does not favour the consumer, but rather the realtor and the seller of property. However, due to the real estate market being one of the largest markets in the US, and to the fact that purchasing property holds impact on a person’s quality of life, it is beneficial, and even vital for the buyer of property to receive aid in the form of a buyer’s realtor, due to difficult due processes which govern the field, which is one of the reasons why having this form of untraditional broker represented in the United States’ system is beneficial. However, it is the norm

¹⁹ Laska, L.L. The Tennessee Law of Real Estate Broker Licensing. 1974. Memphis State University Law Review, vol. 4, no. 3

²⁰ Vorotnikov, E. S. License to Profit: An Analysis of Entry Regulations in the Legal and Real Estate Professions

²¹ Nadel, M. S. Obstacles to Price Competition in the Residential Real Estate Brokerage Market. 2020. Berkeley Business Law Journal, Vol 18, No 1, 2021.

for the seller to pay the commission to both buyer's realtor and the seller's realtor, which is a rather large financial burden on the seller of property²², as the costs related to purchasing property for the buyer consist of many fees, such as the sales price, down payment, closing costs and fees, buyer's agent fee, transfer fees, and other accompanying costs.

It has also been illustrated in a study²³, that the consumers of the United States have not been completely satisfied and the service provided by real estate brokers has not been up to their expectations, specifically relating to the high cost of the service. The aspects that were mentioned to be lacking were 'professionalism', 'guidance' and monetary 'results', which may illustrate that the brokers appear to be more focused on their personal gain from the transaction. In contrast, lower sales prices are also associated with brokers working with smaller firms, agents who have little experience, and are focused on only receiving earnings and not improving the quality of the service, therefore it can again be derived that more experience and qualifications provide a higher quality transaction experience for the participants²⁴

3.1.4 Conclusion on the laws governing the real estate market in the United States

Taking under consideration the aspects discussed in this chapter, it can be concluded that the United States holds a real estate system which has both positive and negative aspects. The author finds that it could be beneficial to any country to closely study the law of other countries, which hold such a large amount of practical models, but still maintain a critical mind when adopting and crafting legislation. Additionally, it can be concluded that as the system which held before the adoption of the new system in the 19th century had some of the same issues which are in place currently in Estonian law and thus, further analysing of this subject could be beneficial for the country's potential improving of current laws and regulations.

²² Stewart, M. Buyer Beware: Who Is Paying the Home Buyer's Real Estate Agent? 2021. University of Miami Business Law Review. Vol 30, Issue 1, 2021.

²³ Pratibha A. Dabholkar & Jeffrey W. Overby (2006) An investigation of real estate agent service to home sellers: Relevant factors and attributions, The Service Industries Journal, 26:5

²⁴ Waller, B., Jubran, A. The Impact of Agent Experience on the Real Estate Transaction, 2012. Journal of Housing Research, Vol. 21

3.2 Norway

Norway has developed a different system than previously discussed countries, with the use of a mostly digitised form of brokerage, which this chapter reviews. Norway has a relatively large percentage of homeowners rather than renters, which is why the real estate market has a large number of consumers. Real estate agents had been used in transactions mostly due to facts that only estate agents had access to housing websites, and due to an increase in property values. However, in Norway, professional real estate sales companies have emerged, which provide the consumers a possibility to sell their property without the use of a real estate agent and to do so with a lower commission rate. These companies offer to carry out the whole sales procedure, and use lawyers or estate agents in the process, in order to minimise legal conflicts which may arise. Additionally, these companies ask for a fee which is set on certain levels of assistance, and which is a set price, rather than a percentage of the sales transaction, in contrast to traditional real estate agents. Furthermore, the state promotes information among its consumers on how to individually sell their property without the use of a third party, using the Norwegian Consumer Council to do so²⁵. However, real estate agents are still widely used, and the real estate agent is traditionally used to represent both parties of the transaction, i.e., the buyer and the seller, in contrast to the United States model, which uses different real estate agents for both the seller and buyer.

In Norway, the profession of a real estate agent is relatively regulated by the state and only agents who have obtained requirements and have received a respective licence may practice the profession. The brokers are also supervised by the Norwegian Association of Real Estate Agents, which implements a code of ethics on the agents, requires them to behave accordingly, and to uphold the standards of estate agency²⁶.

The Norwegian model holds many risks, such as conflict of interest of the parties, as the buyer's interests and the seller's interests can not be equally prioritised by the real estate agent without harming the other if they are representing both parties. However, with the rapid development of technology and the internet, Norway provides an example of how the real estate profession could be covered in the future and in other states as well.

²⁵ Stamsø, M. A. "Selling a house and the decision to use a real estate broker in Norway". 2014. National Institute for Consumer Research, Oslo, Norway. Emerald Insight.

²⁶ Brinkmann, J. "Putting Ethics on the Agenda for Real Estate Agents", 2009. Journal of Business Ethics, 88:65

3.3 Sweden

Sweden is a country with a rather competitive real estate market with the vocation of a real estate agent being rather regulated by the state, belonging to a ‘Nordic licenced broker system’, along with Norway and to some extent Finland, according to a study conducted in 2022²⁷. The Swedish state adopted a regulation in 2022, which requires the brokers to have at least finished a three-year program to obtain a bachelor’s degree in the field in order to be able to provide brokerage services legally. Such a requirement was adopted with the purpose to ensure consumer protection and higher occupational reputation for the brokers. Additionally, supervision of real estate agents is exercised, and by a governmental agency, the Swedish Estate Agents Inspectorate (FMI), which has the right to revoke a license or distribute other sanctions such as a warning or a reminder to the practicing agent²⁸.

3.4 Belgium

The European Union adopted the Directive 89/48/EEC in 1988 and amended it with the Directive 2001/19/EC in 2001²⁹, by which the Member States introduced a general system for recognition of diplomas for professional purposes, and to make training and post-secondary education mandatory in order to practice certain trades. This applies to all Member States, and due to which Estonia developed the EMKM, for raising general standards for practitioners. However, some Member States have gone further with the standardisation of the real estate broker profession, and thus have created further necessary qualifications for the practitioners, such as Belgium. This is illustrated in the European Court Case C-197/06³⁰, where a Netherlands national performed professional activities of an estate agent without having a professional qualification to carry out these acts in Belgium, where acquiring a licence is mandatory for a real estate agent but was not regulated at all at the Netherlands at the time this case took place. The estate agent faced monetary penalties for the breach. This case shows how the Member States are subject to the same European Directives, but some states have taken the legislative process independently further, and created

²⁷ Ahlenius, M. et al. "The occupational life cycle of real estate brokers: a cohort study", *Journal of European Real Estate Research*, 2022. Vol. 15 No. 3

²⁸ Engstrom, R. et al. 2023. "Professionalization of the real estate agent occupation – A comparative study of Australia and Sweden", *Property Management*, Vol. 41 No. 1

²⁹ European Parliament and Council Directive 2001/19/EC. OJ L 206. 31.7.2001.

³⁰ Court decision, 17.04.2008, Leuven, C-197/06, EU:C: 2008:229

national standards for these processes in order to regulate their state, and to protect their consumers.

3.5 The Netherlands

A paper written in 2017 “Real Estate Agent Commission Structure and Sales Performance” illustrates the implemented methods that are viewed as traditional market practice in the Netherlands. For example, it is implied that similarly to other countries brought out in this research, one of the objectives of real estate brokers is to sell properties as fast as possible to maintain the high prices for property in the market³¹. Additionally, it has been brought out that there are different fee systems of the estate brokers in the Netherlands. In contrast to the “traditional” broker type that provides full service to the seller of property, an additional broker type emerged to the market in 2005. This subchapter discusses how the novel estate broker (hereinafter the “flat-fee” broker) differs from the traditional estate broker type in the sense of transaction speed, service provided to the buyer of property, and in the fee amount for the service provided.

3.5.1 Broker fees

The flat-fee broker has a fee that is substantially lower from the traditional broker’s fee, which, according to the 2017 released research, in the range of 400-1300 euros, which is significantly lower from the traditional broker fees, which were about 2 percent of the transaction price. However, in the case of flat-fee brokers, the fee is charged up front and as a prepayment, in contrast to the traditional broker’s fee, which has commonly been paid to the realtor after the transaction has been carried out. This method of payment ensures faster payment to the realtor and smaller fees to the seller of property.

3.5.2 Services provided by brokers

Services provided to the seller of property also vary from the type of broker in the Netherlands. The flat-fee broker does not show the property to potential buyers but leave the showing of property to the owner, differing largely from the traditional broker, who is responsible for the showings. This difference of practice lessens the workload of the flat-fee estate broker, leaving them more time to look for new buyers for the property and to find more properties to represent,

³¹ Gautier, P, et al. 2017, „Real Estate Agent Commission Structure and Sales Performance“. Tinbergen Institute Discussion Paper, TI 2017-049/VI

thus creating more property turnover in the market, which then is followed by higher real estate prices, benefitting the sellers of property.

3.6 European Union regulations

As discussed in the previous chapter, the European Union has provided various regulation for the real estate sector by crafting different Directives. Moreover, the EU adopted the Directive 2005/36/EC on the recognition of professional qualifications, with the purpose of establishing the regulation of professional qualifications, as provided in the Article 1 of the Directive³², and which introduced the obligation for the Member States to notify the professions they regulate and to assess the entry regulations on a national level to different professions³³. The Directive was then amended by the Directive 2013/55/EU by several formal details. The efforts the EU has made to regulate professional fields and to raise the standards of quality show the increased interest in the bettering of the Member States. However, it can be said that as states remain sovereign while being included in the European Union, the efforts of the EU should not be remained alone, and the efforts for bettering the overall legislation standards among the EU should also be the duty of the Member States. Therefore, it can be said that each state has their own obligations in front of their nationals to be interested in bettering the country's regulation, which provides incentive for Estonian lawmakers to conclude improvements on national legislation.

3.7 Conclusion

While briefly discovering the norms and regulations of the Member States and the United States of America in this chapter, it has become apparent that the real estate sector is regulated very differently in different states. However, in order to create and improve laws, it is necessary to have an extensive understanding of all aspects and possibilities the field in question is connected to in order to be able to conclude a sufficient solution. It can be said that no state has laws which lack negative aspects, as the United States' law does not benefit the consumer as much as it potentially could, the Norwegian and Swedish system do not favour the estate agent as much as the consumer, and the Netherlands lacks extensive regulation in the form of broker qualifications. However, no

³² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005.

³³ Overview of the regulatory framework in the real estate sector. 2015. European Commission.

state has regulations which are solely negative, such as high level of qualification of the realtors in the US, Belgium, Sweden and Norway, innovative technological solutions in Norway, and variety of realtor types in the Netherlands. Therefore, it can be said, based on the countries and legal bodies mentioned in this chapter, that all states have potential to further improve their regulations regarding the real estate sector.

4 COMPARISON OF ESTONIAN AND GERMAN LAW

4.1 Differences between Estonian and new German law

4.1.1 The necessity for creation of a contract in written form

The new German law proposes an obligation for the parties to form a brokerage contract in written form, with certain requirements, such as the definite size of the real estate broker's fee in case of sale of property, with the intent to protect a third, future party in the contract. In contrast, Estonian legislature does not have a law which requires this, but rather the formation of a written contract is heavily suggested in order to protect the real estate agent in case of potential disputes regarding payment for services.

4.1.2 Interest for the seller of property for price negotiation of the broker

As Germany adopted the obligation for the seller of property for payment to the real estate broker equally with the buyer of property, it is now in the interest of both parties, the buyer and seller of property, to negotiate the best optimal price for the real estate broker, in contrast to before, when it was only the cost and interest of the buyer of property. This is not the case in Estonia, where the prices of real estate brokers are not divided between the parties, leaving the buyer of property with a higher cost to bear with the included realtor fee to the final price of property, without having the agent's fee be at the most optimal level.

4.1.3 Payment for services

In Germany, payment for services of the broker is an obligation for both parties, which means in case of a sales contract, both parties must pay the broker equally for the broker's services, by dividing the commission. This is not the case in Estonia, where the only party liable for payment to the broker for their service is the buyer of property.

4.2 Similarities between Estonian and German law before implementation of new laws

4.2.1 No requirement of a written contract

The regulation of contracts of real estate agents in Estonia is similar to German regulations before the implementation of the new laws. This means that there is no requirement for the parties to conclude a contract in a written form, but it is voluntary. However, a contract concluded in a written form provides assurance to the seller of property, as an amount of payments for services would be defined in the contract. In case of issues which could arise during the transaction, the parties would have a clear overview of the details which had been formerly agreed upon, and the interests of all parties would be protected, as it can be difficult to prove a contract which has been concluded verbally.

4.2.2 Payment for services

The payment for the services to the realtor in Estonia is made wholly by the buyer of property, which is included in the price of property. This is similar to the norms in Germany which were in place before the application of new laws. This conduct places a large burden on the buyer, as there are already additional costs made to the buyer in the form of notary fees, taxes, and other fees.

4.3 Similarities between Estonian and new German law

4.3.1 Regulation of qualification

There are no necessary state regulated qualifications provided for a natural person to become a real estate agent. This means that a person can become a real estate agent without experience or knowledge in the field and conclude brokerage contracts with clients without having to follow through a field specific study programme or receive a diploma.

4.3.2 Representation by the estate agent

In both countries the real estate agent represents only the seller, and is hired by the seller of property, in contrast to the United States, where both parties have a representative in the sales process. This shows that the real estate agent is working mostly in favour of the seller of property, and therefore is acting in the best interests of the seller, but not the buyer.

4.4 Conclusion of the comparison

There are many differences in Estonian and German legislature regulating brokerage contracts, broker fees and obligations of the parties included in the contract. Before the change in German legislature, which resulted in new adoption of laws regulating the field, Estonian and German laws were not very different, with same lack of necessity for forming a brokerage contract in the written form, same obligations for payment to the real estate broker in case of a purchase transaction and additionally, there were no official state regulated qualifications needed for the real estate broker to act as an agent. The payment sizes for the brokers varied in the same category, but as the German real estate market being larger than the Estonian market, due to a large gap in the countries' capita, provides for a larger payment for the real estate broker in case of transactions, due to a larger number of probable transactions for the broker.

As the problems are more so the same as Germany faced before adoption of the new legislature, it can be concluded that it would benefit the Estonian real estate market to adopt new regulations as well, similar to the ones that Germany adopted. The author concludes that the real estate market in Estonia faces problems such as increased market values for real estate, with the prices of property being highest of all time, which result also in higher real estate broker fees, as the payment is directly linked to the price of the purchasable object.

5 ANALYSIS

5.1 Analysis of similarities of the discussed countries

Taking into consideration that the change in German law was conducted on the analysis of the system and the found shortcomings of it, and as current Estonian laws are similar to the German ones, it can be concluded that the Estonian real estate system could benefit from the new applicable laws as well, especially due to the nature of Estonian and German law being analogous in its essence.

5.1.1 Similarities of Germany and Estonia before application of new laws

One of the reasons for changing previous German law, as discussed in the chapter 3.3., was difficulties in purchasing property, because the prices had risen too high, considering the addition of the estate broker's commission, notary fees, taxes, and land registry fees, but which fees are not fully covered by the home purchase loan. This problem also exists in Estonia, with the realtor's fees being rather considerable, and with the additional notary, tax, and other fees, the sum of a purchasable property adds up quite drastically. Another reason for the law improvement was disproportionate rights of the parties. This being a theoretical issue, it can be found in Estonian conduct also when the seller is the party who decides on employing the realtor, and also decides on the payment size. This conduct is considered disproportionate towards the buyer, as they do not have a say in the process, regardless of being the party who finalises the payment, even though the act of hiring a realtor is not necessary in the transaction at all. Thirdly, due to the reasons of rapidly increasing market values the change in regulations was conducted, and as the real estate market in Estonia is increasing also, this issue is present as well. Taking these aspects into consideration, it can certainly be concluded that the regulations which Germany has newly implemented, such as dividing the realtor's fees between the seller and buyer and making the conclusion of a brokerage contract in a written form mandatory, could also largely and positively impact the nature of the real estate market and the real estate agent profession in Estonia.

5.1.2 Similarities of Estonia and the United States before the formation of a new system

As it was not mandatory in the United States to have acquired a professional licence in order to practice the realtor's trade before the creation of the current system, similarly as it is currently regulated in Estonia, the two systems can be compared regardless of having a different legal

system. It was concluded in chapter 4 that requiring a person to have qualifications and a professional licence to become a realtor should be necessary in the United States, as the lawmakers saw the opportunity to professionalise the trade, and to raise its value. Thus, creating a nationally accredited institute, such as NAR was prioritised, and the new system was created. Parallels can be drawn with Estonia, where the EKMK carries out the licensing of realtors, but it has not become mandatory for professional real estate agents. However, according to some of the professional estate agents that have acquired their licence in Estonia, it should be made mandatory in Estonia as well for realtors to follow through a nationally accredited educational programme, and to obtain a licence, in order to raise standards in the trade and to protect consumers from the highly competitive market, as discussed in chapter 1.

As it is brought out in 3, where the necessity for application of a new system in the United States in the 19th century is discussed, it can be seen that the reasons for the need for creating a new system were complicated real estate transactions, a negative reputation of realtors, and the favouring of estate agents and sellers of property, as the system held no benefits for the consumers. These aspects created an unhealthy competition market, due to a high number of realtors, little regulation, and lessened the quality of service, and kept real estate prices lower in order for the realtors to conclude transactions faster. Therefore, it can be said that the system was benefitting mostly realtors and was not beneficial for the other parties involved. All of these points are currently similar to Estonian regulations, and thus, all these negative aspects apply to the Estonian markets as well, as can be seen today in the real estate market.

5.2 Analysis of European Union regulations

The regulations which govern the Member States are the same, as the Directives are applied to all states the same. However, the additional steps countries can take vary largely, depending on the legislators of a state. Discussed in the chapter 3 of this thesis, a difference can be seen in the Belgium and the Netherlands example, where neighbouring countries have a different set of regulations which govern the real estate sector. In Belgium, according to the state's laws, the real estate agent must be professionally licenced, in order to carry out the acts of the realtor, but in the Netherlands, this area was not regulated at the time the court case took place, which was examined in the chapter. This provides a thought that it is possible for the legislators of the Member States to show proactive incentives, and to take legislating of their country further than the European

Union has provided the states with. As it is the European Union's mission to raise the standards of the Member States and to show an exemplary way of conduct to non-member states, it is still every state's duty to carry out additional steps to better the quality of service for the European Union as a whole. As Belgium has shown a positive example by implementing further laws in order to regulate the real estate sector better, the author believes that Estonian legislators could see an improvement from adopting additional regulations in the field as well, and by doing so, providing a positive example to the other Member States as well, who have similarly not implemented any further regulations in the area as well.

5.3 Analysis of Norwegian and Swedish regulations

The real estate sector in Norway is regulated in a rather innovative way by the private sector, and by implementing technological solutions to the field. Additionally, the state has encouraged sellers of property to sell their real estate by themselves, and by doing so, saving their financial means and increasing the knowledge of the consumer, in contrast to the United States, where the consumers lack of knowledge about transactions indirectly powers the real estate sector. Due to Estonia being a technologically advanced country, parallels can be derived from the Norwegian model. Therefore, the author finds that the government could discover the area of raising the knowledge of the consumers more, while also maintaining supervision of real estate agent's service quality, and potentially adopt some means of informing its citizens about the risks of inexperienced real estate brokers and possibilities of selling real estate without the aid of the real estate agent. By doing so, the state could potentially lessen the number of disputes between the parties and raise the quality of standards regulating the field.

It can also be said that the states of Sweden and Norway are very proactive in preventing real estate transaction related court disputes and prioritises the protection of the consumer, by regulating the broker's profession and by implementing governmental bodies to supervise the services provided by the agents.

5.4 Conclusion of the analysis

As the author has analysed all examples which have been provided in this thesis, which included the German, United States, Norwegian, Swedish, European Union Directives, Belgium, and the

Netherlands, the author has found that many positive examples can be derived, which could positively impact the real estate sector in Estonia. By using German legislature as the main example in this thesis, the author has found most beneficial ideas from there, such as making the written contract mandatory, and the dividing of payments for service to the realtor by the buyer and seller, but also has found several beneficial and innovative ways from other states as well. Using Norway as an example, the author has found that discovering more modern ways of monitoring the field, such as using the internet and technology to regulate the sector and raising the levels of knowledge by the consumers regarding real estate transactions could benefit the state in various ways, and would demonstrate innovative incentives, along with the stricter regulation of the profession by the state in Norway and Sweden. Also, as discussing the Directives provided by the European Union, the state could show its proactiveness and would be an exemplary country for other Member States, which have also not improved their regulations in the real estate sector further from the imposed regulations of the European Union.

6 PROPOSITION

6.1 Implementing new regulations in the field of real estate in Estonia

As discussed in previous chapters of this thesis, the real estate broker's profession comes with a high number of risks, along with obligations of the broker arising from contractual rights of parties that partake in the transaction of purchasing or selling of real estate. Due to these risks and obligations, it can be pointed out that the state could lessen these risks by regulating these areas, and thus aid the efficiency of the market and increase the value of the real estate broker's career path. Also, as provided in the analysis chapter of this thesis, the author has shown the need for implementing new regulations in the field and discussed the beneficial aspects of doing so by analysing the examples of regulation which have been implemented in other countries.

6.2 The proposed improvements

6.2.1 Requirement of an official licence

Firstly, the author proposes making it a requirement for a person who wishes to become a real estate agent to complete a course in that field. The course should cover the aspects of which a real estate agent faces in the field, and therefore minimise the risks accompanied. The course should consist of a nationally accredited study programme and could only be finished with a diploma. The need for this proposed action is illustrated by the benefits of the United States system. Therefore, for a person to act as a real estate agent, this diploma or licence should be legally required by the state.

6.2.2 Dividing of payment for services of the realtor

To lessen the costs for the buyer of property, the author proposes for the agent payments be equally divided between the parties. This could be implemented by a legal act, making it mandatory for the parties to divide the cost of payment, and as provided in German law, the payment could be proved by providing an official validation of payment from the estate agent to the seller of property, who would first cover the costs of the realtor, and which would then be reimbursed for up to 50% of the other party.

6.2.3 Making it mandatory for the parties to conclude a written contract

The author proposes for the estate agent contract to be legally required to be concluded in a written form which would provide the exact details of the contract, such as amount of payment to the realtor, the conditions of the transaction, such as the price for the property, and the possible time frames of the transaction.

6.3 The potential outcomes for implementing the proposals

This chapter discusses the potential outcomes of applying the proposals brought out in the previous chapter, which included making it a requirement for real estate brokers to acquire a licence, which would be obtained by following through a nationally accredited course, and the dividing of real estate agents' payment for services between the buyer and seller. The model system would then require the real estate agents to be licenced, after following through a nationally accredited institution's course, the transactions would be detailed in the written contract concluded by the parties, and the obligations of the parties included would be more balanced, with the equal burden of costs provided by the payment to the realtor.

6.3.1 Rising the standards of ethics among real estate brokers

Standards of ethics are directly linked to the Ethics Code of Brokers in Estonia, and with making it mandatory for brokers in Estonia to have an acquired diploma or a qualification given by the Estonian Chamber of Estate Agents or by another nationally acclaimed institution, more brokers would be aware of the standards of ethics and would be required to follow said standards. This would lessen the instances of brokers not following codes of ethics and would have knowledge on these requirements.

6.3.2 Minimising the risks from lack of knowledge among young, unexperienced real estate agents

As real estate agents who lack practice in the field usually lack specific knowledge of certain details about transactions, codes of ethics, contractual matters, and information about the real estate market, and get their information from colleagues or from practicing the field, it would be beneficial for them to take part in a practical and informative course which would provide them with necessary information, and therefore make them more professional and experienced.

6.3.3 Differentiation between licenced estate brokers and unexperienced brokers

The Estonian Chamber of Real Estate agents consists of members who have nationally acclaimed quality education about the trade of real estate agents, who follow the code of ethics of brokers, have experience in the field and might have more quality service possibilities to offer to their clients than new, unexperienced realtors without experience or professional knowledge. Many owners of property might not be in possession of information about differences between officially qualified realtors and unexperienced realtors and may make the choice of representation based on marketing or other factors not linked to experience. Therefore, realtors who have acquired a qualification in the field may have less clients in contrast to brokers who have not obtained a qualification. By making it necessary for all realtors to acquire qualifications in the field in order to practice the trade, there would be no differentiation between brokers and the overall quality of service would be higher.

6.3.4 Providing reassurance to customers and companies who use estate brokers' services.

Owners of property who wish to find representation for them in a sales contract could hire realtors and be sure that the quality of service would be high. This would also be backed by the Estonian Chamber of Estate Agents, who are liable for Estate Agents and perform quality control within their members, which would provide the owner of property a guarantee.

6.3.5 Upsurging the reputation of the career path and potentially including more specialists to study the career path

In case of making it necessary for estate agents to have certain qualifications, over time the reputation of estate agents would rise, which would therefore potentially increase the percentage of homeowners who use real estate agents, and moreover create interest in young specialists who wish to become real estate agents.

6.3.6 Reduction of disputes between the parties

In case of adopting the regulation, which requires parties to form a real estate agent contract in written form and make requirements for the contract, such as specifications for fees and other necessary details, the number of disputes regarding brokerage contracts would potentially decrease.

6.3.7 Equal obligations of the parties

By making it mandatory for both parties of the transaction to bear the costs of the real estate agent, the costs would be more proportionate in contrast to now, where the buyer of property covers the costs of the real estate broker, which the seller of property has a possibility to choose, while not regarding the price of the estate agent. Furthermore, the pricing of the agent becomes more important to the buyer then as well, as the buyer must cover half the expenditure, and therefore, the costs which are accompanied by the whole transaction become more manageable to the buyer of property.

6.3.8 Regulating an underregulated area of legislature

As provided in this thesis, the author finds the field of real estate brokers and brokerage contracts to be underregulated. By adopting the regulations suggested by the author, the state would reduce the uncertainty in this area and support the field of real estate agents.

6.3.9 Creating new occupational positions that regulate and supervise the following of these regulations

In case of adoption of new laws which require real estate agents to be qualified by national requirements, the state could create new job positions and lessen unemployment levels of the state, by assigning employees to perform monitoring of following of laws and regulations. This would possibly lessen the unemployment rate of the state.

7 CONCLUSION

As legislation and court judgments provide a clear need for necessity of a brokerage contract to be concluded with different and concrete specifications with the obligation of payment to the broker, it can be concluded that there is a clear need for regulation by the state in that area and would benefit the parties of contract by providing a clear set of rules which prevent possible disputes. Due to high similarities in the German law before the adoption of new legislature and Estonian current legislature, the same issues which prompted the change in German legislature can be found in Estonia, such as difficulties in purchasing property due to high commission rates of real estate brokers, disproportionate rights due to lack of interest of the seller of property in the size of payment to the real estate broker, and increased market values due to the economy. Therefore, it can be concluded that adoption of new regulations, such as creating a qualification standard for realtors, making payment for the broker obligation for both parties of the sales contract, and to make it obligatory for brokers and owners of property to conclude a brokerage contract in written form, would be beneficial to Estonia. These benefits include higher quality of service in the field of estate brokers, decrease in disputes regarding broker contracts, and increase the standards of ethics in the field of real estate brokers.

The aim of this thesis was to provide a comparative overview of German and Estonian law which regulates the real estate trade and to discuss the essence of the profession itself. The author proposed a hypothesis that in Estonia, real estate agents are not qualified enough, in order to practice the profession. The author has proved this hypothesis by discussing the current shortcomings of Estonian laws in this field and by comparing different countries' laws and regulations in the same field, and by discovering correlations for them by conducting analysis. The comparison was conducted mainly based on comparing Estonian and German legislature, but additionally, the United States, Norwegian, Swedish, Belgian, the Netherlands and overall European Union directives were discussed. By doing so, the author illustrated the possible improvements which could be made to the Estonian laws and provided an overview of the potential benefits the improvements could have on the real estate market and the real estate agent's profession.

The author has made propositions based on the findings concluded in the analysis, which are to make it obligatory for real estate agents as professionals to finish a nationally accredited course,

in order to acquire a diploma, which would be according to the proposal mandatory by law, if a person wishes to practice the real estate profession in Estonia. Additionally, the proposal has been made to make the realtor contract mandatory to be in a written form, which would then cover all details and requirements of the transaction. Finally, the author has proposed to make the payment for services to the realtor to be divided equally by the seller and buyer of property. If these proposals would be implemented, the author has brought out that benefits from these actions would include rising the standards of ethics among real estate agents, minimise risks which come from inexperienced young realtors, more differentiation between experienced realtors, reassurance of quality to consumers, increase of the reputation of real estate agents, reduction of disputes between parties and more proportionate obligations of the parties.

8 KOKKUVÕTE

VÕRDLEV ANALÜÜS MAAKLERILEPINGUTEST EESTI JA SAKSAMAA ÕIGUSES

Annaliisa Aas

Bakalaureusetöö eesmärk on võrdleva analüüsi tagajärjel välja tuua ülevaade Eesti ja Saksamaa õiguses maaklerilepinguid ja kinnisvaramaakleri eriala reguleerivaid seadusi ja norme ning luua lugejale ülevaade maakleritöö olemusest. Autor püstitas hüpoteesi, mille kohaselt ei ole tänasel päeval Eestis maaklerite tegutsemine piisavalt reguleeritud. Autor põhistas võrdlevat analüüsi Saksa õigusega tulenevalt Saksamaal vastu võetud uuest seadustikust, millega uuendati kinnisvaramaaklereid reguleerivat normistikku, luues maakleritele rohkem nõudeid ning muutes uueks normiks poolte võrdse maakleritasu kandmise kohustuse.

Töö esimeses osas tõi autor ülevaade Eesti õiguses olevatest normidest ning seadustest, mis katavad maakleritöö olemust. Välja on toodud Võlaõigusseaduse paragrahvid, mis loovad maakleritele ning kinnisvara müüjatele otsesed kohustused ning katavad tarbijate õiguseid lepingu sõlmimisel. Lisaks on välja toodud lepingu täitmise vormid, maaklerile teenuse eest tasumise tavad ning suuremad üldised probleemid, mis käivad Eestis maakleritööga kaasas. Välja on toodud probleemid nagu maaklerilepingu kirjalikus vormis esitamise nõude puudus, suured maakleritasud ning üldine maakleri kvalifikatsiooninõude puudumine. Lisaks on pööratud tähelepanu Eestis töötavatele ning EKMK kutse omandanud maaklerite seisukohtadele, mille kohaselt ei ole Eestis maaklerina tegutsemine piisavalt reguleeritud, milline olukord on kahjulik nii turule kui kinnisvaramaakleri mainele.

Töö teises osas on toodud ülevaade maakleritööd reguleerivatest seadustest Saksamaal. Välja on toodud üldine ülevaade seadustest, nii enne uue seaduste vastu võtmist kui pärast uuenduste omastamist. Samuti on näidatud maaklerilepingu sõlmimise nõudeid, mis on varasemaga võrreldes uuenenud selle vormi osas, nõudes osapooli vormima lepingu kirjalikult ning märkima lepingus ka kindla maakleritasu summa. Lisaks on pööratud tähelepanu asjaolule, et maakleritasu kuulub kandmisele mõlema osapooli poolt erinevalt varasemast, kui maakleritasu kandis täies ulatuses kinnisvara ostja. Välja on toodud ka erinevad põhjused, mis ajendasid Saksamaa õigusloojaid uuendusi rakendama, mis autori hinnangul sarnanevad Eesti praeguse õigusega.

Töö kolmandas osas on välja toodud erinevate riikide seadused ning praktika, mis reguleerivad maaklerite tööd. Käsitletud on ka Ameerika Ühendriikide õigussüsteemi ning selle seaduste temakohasust käesolevas bakalaureusetöös. Selles peatükis räägib töö riigi maakleritöö regulatsiooni ajaloost ja selle arengust ning praegusest olukorrast. Lisaks on välja toodud sarnasused praegusele süsteemile eelneva ajastuga ning Eestis valitseva õigusraamistikuga ning arutatud uue süsteemi kasutusele võtmise põhjuseid.

Töö neljas osa käsitleb võrdlust Eesti ja Saksamaa seadustest, näidates nende erinevusi erinevates maakleritööd puudutavates aspektides, nagu lepingu sõlmimine ning tehingu läbiviimine. Samuti on toodud ülevaade seaduste sarnasustest.

Töö viies osa koosneb analüüsist ning loob ülevaate mitmetest erinevatest riskidest, mis kaasnevad maakleritest, kellel puuduvad sellel erialal töötamise kohta vajalikud teadmised, oskused ning kvalifikatsioonid. Peatükk räägib põhjustest, miks kinnisvaramaaklerite reguleerimine ning nende oskuste tõestamise kohustuslikuks muutmine oleks kasulik maakleritöö edendamiseks ning selle eriala maine tõstmiseks. Eeltoodu ilmestab riskide olemasolu ning vajalikkust tarbijate kaitsemiseks nende riskide eest. Lisaks on välja toodud analüüs Eesti ning Saksamaa seadustest ning toodud välja põhjused, miks Saksa uuenduslike seaduste kasutuselevõtt oleks Eestile erinevates aspektides kasulik.

Kuues peatükk koosneb autori ettepanekutest töö vältel leitud järeldustest ning erinevate lahenduste pakkumisest Eesti õiguses olevatele probleemidele. Samuti on ilmentatud võimalikud kasulikud tagajärjed uute seaduste rakendamisel.

Käesolev bakalaureusetöö on viidud läbi kasutades kvalitatiivseid ning võrdlevaid uurimismeetodeid, võrreldes erinevate riikide seaduseid ning regulatsioone ning tuues nende põhjal välja järeldused.

Autor kinnitas püstitatud hüpoteesi, mille kohaselt ei ole Eestis kinnisvaramaaklerite erialal tegutsemine piisavalt reguleeritud ning jõudis järeldusele, et võttes eeskujuks Saksamaa ning ka teiste riikide seadusloomet oleks kasulik nii erialaselt tegutsevatele maakleritele, tarbijatele ning kinnisvarasektorile, kui maaklerite tegevusele rakendataks täiendavad nõuded ning olemasolevatele seadustele rakendataks parendusi.

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