

Reasons for discontinuation of distraint – Abstract

The subject-matter of this diploma thesis are the reasons for the discontinuation of distraint performed by a court distrainor in accordance with the Rules of Distraint. The importance of the chosen topic is justified by the fact that the only means the liable party can use to effectively defend themselves against distraint is a motion for the discontinuation or postponement of distraint.

The first part of the diploma thesis deals with sources of the legal regulation, the most important amendments and the basic terminology which is closely related to the discussed procedural institute of the discontinuation of distraint. One of the key principles governing the distraint proceedings is the principle of protecting and defending the liable party while performing distraint. The chapter focused on basic principles affecting the course of the distraint proceedings deals particularly with those principles that are applied in the stage of the distraint proceedings from the filing of the motion for the discontinuation of distraint, or the motion for the postponement of distraint, until a decision on that motion is taken, or also in the cases where a decision on the discontinuation of distraint is taken even without filing a motion. The chapter focusing on the content requirements concerning the motion for the postponement or discontinuation of distraint and on defects in filing, including the steps to be taken to rectify such defects, forms an integral part of the diploma thesis. There follow two separate chapters dealing with the procedural institutes of the postponement and discontinuation of distraint. The most essential part of the diploma thesis is the chapter focused on the reasons for the discontinuation of distraint. We distinguish the general reasons for the discontinuation of distraint laid down in the provision of Section 268 of the Code of Civil Procedure and the special reasons for the discontinuation of distraint stipulated for the individual methods of distraint. The issue of affecting property that belongs to the joint property of spouses and the related defence of the liable party's spouse is also discussed in detail since this is a frequently amended and therefore complicated legal regulation.

When working on the given topic, the author relied on the current legal regulation, the relevant case law and the practice gained in a distrainor's office. She put emphasis on the general reasons for the discontinuation of distraint since we usually encounter these in practice. The diploma thesis particularly aims to provide the reader with an overview of which relevant reasons have to be pleaded by the party to the distraint proceedings to achieve the discontinuation of distraint with their motion.