

Declaratory or Constitutive Change?

On 21 August 2025, the President signed an amendment to the Act of 20 May 2021 on the Protection of the Rights of the Purchaser of a Residential Unit or Single-Family House and on the Developers' Guarantee Fund. Although this change is "advertised" as significant and as strengthening the protection of purchasers, its actual impact on practice is more of a clarifying than a revolutionary nature.

What does the amendment entail? A new Article 41a has been added to the Act, providing that in the event of the transfer to the purchaser of rights arising from a development agreement (or other "related" agreements), the developer's liability for defects – both physical and legal – shall be governed by the provisions of the Civil Code on warranty for defects in a contract of sale (Articles 556 et seq. of the Civil Code).

The new provision fills a gap after the repeal of the previous Development Act of 2011, which had expressly provided for the application of warranty provisions. The Act in force since 2022 no longer contained such a reference, which caused certain interpretative doubts. The question emerged whether the developer's liability should be based on statutory warranty or solely on the rules of liability for improper performance of an obligation (Articles 471 et seq. of the Civil Code).

In practice, however – both in case law and in legal scholarship, as well as in everyday development activity – the view has become well established that statutory warranty also applies in the case of a development agreement once ownership has been transferred. This position has always appeared rational, especially since the transfer of ownership generally occurs by way of a contract of sale. The mere fact that such a transfer was preceded by a development agreement should not, in our view, raise doubts that the purchaser is entitled to the protection afforded by the statutory warranty regime. The amendment, therefore, does not so much change the actual legal state as it confirms and stabilizes the existing approach.

It is worth noting that the new provision covers not only residential units, but also single-family houses, the common areas of a development project, and – thanks to the reference to Article 2(2) of the Act – also commercial premises. This constitutes a positive clarification of the scope of protection.

In summary, the amendment of 21 July 2025 introduces a kind of legislative supplementation, but its real impact on day-to-day real estate practice will likely be rather limited. The change – although beneficial, as it tidies up and clarifies the law – is far from revolutionary. In this context, using legal terminology, one may conclude that the change is of a more declaratory rather than constitutive character.

Do you want to know more? Contact us!

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