

Perpetual solution to a persistent problem

Recently, a draft act was published in the Government Legislation Centre aimed at resolving one of the most persistent issues concerning land developed with housing cooperative buildings. The draft is currently at the governmental work stage, but its assumptions already make it possible to identify the key directions of the proposed changes.

The proposed regulations primarily concern real properties on which housing cooperative buildings are located, where the legal status of the land has not been fully clarified. In practice, this refers to situations in which cooperatives are in actual possession and use of land but hold neither ownership title nor perpetual usufruct.

During the communist period in Poland, buildings were erected on such land and remain managed by cooperatives to this day. Rights to apartments in these buildings function on the market and under civil law as an expectation (a contingent right) of acquiring a cooperative ownership right to premises. Such apartments are subject to civil law transactions, although they often achieve slightly lower market prices than fully “ownership-based” units or fully established cooperative ownership rights. This is mainly due to some uncertainty regarding the future legal status of the underlying land, as well as the inability to establish a land and mortgage register, and consequently the inability to secure a mortgage, which makes it more difficult to obtain financing for the purchase of such property.

The draft aims to create a legal basis for the regularisation of the unclear legal status of land developed with housing cooperative buildings. The proposed provisions apply only to properties owned by the State Treasury or local government units that have been in the possession of housing cooperatives since at least 5 December 1990. These conditions mean that the regulation is limited in scope and addresses historical factual situations - it covers only cases in which the use of the property has been long-term and established under the previous economic and political system.

The procedure is to be initiated upon an application submitted by a housing cooperative requesting the establishment of perpetual usufruct over the land and the free-of-charge transfer of ownership of the buildings located thereon. The public administration authority will be obliged to examine the application within 12 months from the submission of a complete application, which is intended to limit delays in proceedings concerning properties with complex legal status. The procedure is to conclude with an administrative decision determining whether the legal title to the land can be regulated. This decision does not directly produce proprietary effects but constitutes the basis for

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concluding an agreement under which perpetual usufruct is established and ownership of the buildings is transferred to the cooperative. Consequently, the regulation is based on a two-stage model: first an administrative decision, followed by its implementation through a civil law transaction.

As a result, the mechanism does not provide alternative models of acquiring rights, but rather a unified framework in which both land and buildings are subject to a single resolution leading to their legal “combination” within the cooperative structure. However, obtaining rights to the land will not be free of charge. The obligation to pay fees associated with the establishment of perpetual usufruct will be maintained, including the initial fee and annual fees, determined in accordance with the principles set out in the real estate management regulations. This means that the regulation is intended to clarify legal status while preserving economic compensation for the landowner.

A condition for granting the application is that the cooperative demonstrates specific factual circumstances. It is crucial that the land is developed with a housing cooperative building, remains in the actual possession of the cooperative, and is used in accordance with its residential function. At the same time, amendments to the real estate management act are also envisaged, aimed at enabling the practical application of the new provisions. This concerns in particular the rules for managing public real estate and agreements leading to the establishment of perpetual usufruct and the transfer of ownership of buildings.

At present, the draft remains at the legislative work stage, meaning its final form may still change. However, its direction is already clear: the legislator is aiming to create a systemic and controlled mechanism for regulating the legal status of land under existing cooperative housing buildings. Thus, once again, it appears that reports of the demise of perpetual (nomen omen) usufruct have been greatly exaggerated.

Do you want to know more? Contact us!

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