

Schrödinger's Forest

A new law came into force recently, the Act of January 26, 2023, amending laws for removing unnecessary administrative and legal barriers (also known as the Deregulation Act). Among other things, it changes the Forest Act. Formalities related to property sales have been "reduced". A seller's statement is now sufficient instead of a certificate of absence of the State Treasury's pre-emption right linked to the forest nature of the property. The amendment is controversial, among other things, due to the increased risk of invalidity of such sales contracts. However, let's start from the beginning and consider what a forest is.

According to Art. 3 of the Forest Act, a forest is land with a compact surface of at least 0.10 ha, covered with forest vegetation (forest crops) - trees and shrubs as well as forest undergrowth - or temporarily devoid of it, intended for forest production or constituting a nature reserve or included in a national park or entered in the register of monuments, or land associated with forestry, occupied by elements specified in the Act for the needs of forestry. This definition generates several doubts, especially concerning the "intended for afforestation" condition. The prevailing view in jurisprudence is that this condition cannot be limited to the designation of land for afforestation in the local spatial development plan or in the building conditions. What is more, other definitions have been introduced for the purposes of other legal acts. The Act on the Protection of Agricultural and Forest Land, defining "forest land," refers not only to forests within the meaning of the Forest Act but also to land reclaimed for forestry needs and land under access roads to forest land.

The State Treasury (represented by the State Forests) is entitled to the statutory right of first purchase of land: (1) designated as a forest in the land and building register or (2) intended for afforestation specified in the local spatial development plan or in the decision on building and land development conditions, or (3) being a forest, covered by a simplified forest management plan or a decision of the head of poviát issued based on the inventory of forest conditions. The legislator does not refer to the forest (within the meaning of the Forest Act), but to data from the land and building register (EGIB). This suggests that a forest may not constitute a forest use in EGIB (and vice versa). Otherwise, the legislator would not have introduced such a distinction. It would be sufficient to indicate that the lands constituting forests (within the meaning of the Forest Act) are covered by the right of first purchase.

Practice, as usual, is based on its own solutions, that go bit "astray" the legal regulations. Usually, for administration officers and notaries, all that matters for the qualification of a piece of land as a forest is the data from the land and building register. The problem arises when there is an 'Ls' entry in the register, but in fact the property has nothing to do with forest.

Entries in the register are usually updated "on the occasion" of other activities in connection with the obligation of courts, notaries, and administrative bodies to transfer relevant copies and information on completed activities for updating purposes in the register. Heads of poviats are reluctant to use the power to update entries ex officio. The obligation of property owners to report changes in registration data is usually not enforced. All this means that the status of entries in EGIB often does not correspond to the actual state.

The annex to the land and building register regulation includes lands defined as "forest" in the Forest Act. According to the relevant provisions of the Geodetic and Cartographic Law, the land and building register, in part concerning forests, is kept taking into account the provisions on forests. This Act also implies the presumption of the current status of entries in EGIB and, as a rule, the binding nature of data from EGIB.

Is it possible for a surveyor to draw up documentation for updating entries in the register based on these regulations?

Formally, such a procedure is permissible, but in practice, for the purposes of the update, administration demands obtaining a change of designation of the land for non-forest purposes, as well as the exclusion of the land from forestry production. And we have come up against a wall with the problem, because the change of purpose and the exclusion of forest land from production applies to forest land within the meaning of the Act on the Protection of Agricultural and Forestry Land, so primarily to forests within the meaning of the Forest Act. Breaking through this wall would require breaking the practice of administrative bodies and officials in the State Forests.

And so formally there is a forest and at the same time there is no forest. And - as the poet said - midway upon the investment life, the investors find themselves within the forest dark.

Do you want to know more? Contact us!

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