

## To be or not to be (residential)

Recently, the real estate market has been watching carefully the repercussions following the refusal of the Warsaw city hall to confirm the independence of the premises completed as part of the recognised developer's investment in the district of Wola. The dispute in this case relates to the refusal to issue certificates of separation of the premises - a document necessary to establish their separate ownership. It is worth noting that the possibility of establishment of a separate ownership of premises is not limited in Polish legal system to residential premises exclusively. According to the relevant provisions of the act on premises ownership, premises for purposes other than housing may also constitute the separate real estate.


However, practical problems are generated by reference to the norms concerning residential premises to be applied accordingly in this respect. This applies in particular to the inclusion in the scope of this reference of the definition. A residential premise is a room or a group of rooms separated by permanent walls within a building and intended for permanent residence of people, which together with auxiliary rooms serve to satisfy their housing needs.

Accordingly, the aforementioned shall constitute also a definition for the premises of other purposes.

Different technical requirements apply to residential and commercial premises. The legislator naturally places special requirements on premises intended for housing. They should meet the needs for premises intended for a permanent stay of persons, be equipped, among other things, with a kitchen, sanitary facilities, adequate daylight and ventilation. A premises of this type may not have a floor area of less than 25 sq.m. Non-residential premises, depending on their type, should meet other, usually less restrictive, requirements.

The essence of the dispute, in this case, lies in the discussion of whether this is a case of hotel rooms or residential 'micro-apartments'. This may be considered as possible attempt to circumvent the technical regulations for residential units.

The developer responds, however, that these units were never intended to be residential. It is reflected, in particular, in the amount of VAT applicable to their sale and the lack of permanent residency signalled to purchasers. In addition, they are trendy and often primarily a form of investment - they are rented out on a short-term basis just after purchase.

An abstract architectural rendering of a modern building facade. The structure is composed of various geometric shapes, including cubes and rectangular blocks, in shades of teal, blue, and purple. The building is set against a background of a sunset or sunrise sky with soft, warm colors. The overall style is futuristic and geometric.

Condo-hotels (also known as apart-hotels) and institutional rental developments (so-called PRSs) - types of investments that have been popular in recent years, fit perfectly into the same legislative gap. In a condo development, once the units are separated, they are usually immediately made available by their purchasers to the operator, who 'manages' the entire facility so that it functions as a hotel.

The nature of the premises ring-fenced in a condo-hotel depends primarily on the local planning conditions. These rarely provide for (or exclude) explicit use for this type of purpose. Projects of this type are usually built in areas zoned for residential or commercial purposes. Thus, in the case of condo-hotels in residential areas, the units to be separated should be residential and meet the technical requirements for this type of premises. Unlike condo-hotels, in the case of PRSs, usually, the same entity remains the owner of all the premises in the building.

Their formal separation is, therefore, not necessary. However, the questionable nature of these premises means that doubts about the feasibility of this type of development already arise at the stage of the examination of their compatibility with the planning designation (in practice, again, most often, residential or commercial).

The dispute over an investment in Warsaw's Wola district is one of many examples illustrating how legislation has failed to keep up with the practice of the modern property market. The legislator, however, seems to need to pay more attention to this problem. So far, we cannot identify attempts to introduce solutions at the statutory level, despite the perfect occasion - proposed major spatial planning reform.

In practice, the burden of deciding on complex issues that need to be clarified at the statutory level is transferred to the administrative authorities. The rulings issued in these types of cases thus shape practice, which will affect the feasibility of other developments on the borderline between housing and short-term stay in the future.

## Do you want to know more? Contact us!

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