


Where is your certificate?

Contrary to appearances, this question is not addressed to students soon beginning their summer holidays, but to property owners who plan to sell or rent them. Recently, an amendment to the law on the energy performance of buildings came into effect. It significantly expanded the requirements concerning the previously existing institution of energy performance certificates - documents that include, among other things, data determining the energy demand of a building/premises for heating, ventilation, hot water, air conditioning, or lighting.

Since April 28, in connection with real estate transactions - both sales and leases of buildings and premises (relating to all properties, not just new ones), the owner/manager or the person entitled to cooperative ownership or cooperative tenancy rights is obliged to provide the certificate to the buyer at the time of notarial activities or a copy of such certification to the tenant when concluding the lease agreement. The new regulations also impose an obligation to include energy performance indicators in advertisements or announcements for the sale or rental of buildings or premises for which such a certificate has already been prepared. According to the legislator, the introduced changes are intended to increase public awareness and promote the construction of buildings with the best possible parameters for energy efficiency. It is reasonable to assume that it supports better energy efficiency in relation to newly constructed buildings .

In the event of failure to provide the certificate, the notary must inform the seller about the risk of a fine. Non-compliance with the new requirement may result in a fine of up to five thousand Polish zlotys. The buyer or tenant cannot waive the right to receive such a document. They may request in writing the seller or landlord present it, and if, despite that, the document is not provided, they can prepare the certificate at their expense.

To eliminate quasi-certificates from the market, energy performance certificates should now be issued only in the ICT system, in the so-called central register of energy performance of buildings, by individuals entered in this register. Additionally, they must contain a registration number and a declaration from the person issuing the certificate (under penalty of criminal liability) that the document was generated from the central register.

A vertical, abstract architectural rendering of a building facade. The structure is composed of various geometric shapes and planes in shades of teal, blue, purple, and pink, creating a complex, layered appearance. The background shows a soft, hazy sky with a hint of a sunset or sunrise.

The amendment also introduces obligation to attach a copy of the certificate to the notice of completion of construction or the application for a permit to use the building. While the requirements in this regard for newly built structures raise no particular doubts, difficulties arise concerning older buildings. Such regulations were not anticipated during their construction. It is obvious that newly constructed buildings are more energy-efficient. But what impact on the energy efficiency of the old buildings or the apartments located within such buildings have their current owners/managers?

What real impact on the energy efficiency of their apartments do owners or fortunate holders of cooperative rights to units in old buildings have? They usually do not even possess significant technical information or documents on the building in which their units are located, such as plans or other documents relevant to the preparation of a certificate. It would be more rational to impose the obligation of obtaining the certificate on the appropriate housing cooperative. Particularly interesting in this context is extending this obligation to the residents of co-op buildings who have tenancy rights (functionally closer to renting than ownership).

In this regard, it seems exaggerated to extend this requirement also to parts of the buildings. Although, in the case of apartments, at least it is clear which "parts of the building" are referred to. However, doubts arise regarding buildings where individual "units" are not formally separated (e.g., shopping malls or office buildings). It can be questioned which of them are "intended for separate use" according to the definition. Therefore, in such a case, it is not clear for which "parts" of the building the certificate should be prepared.

Given these inconveniences, it can be expected that the direction of practice development will largely depend on how inevitable and severe the fine for non-compliance with the new requirements proves to be in practice.

Do you want to know more? Contact us!

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