

# Proposed changes to the developers' law

The Office for Competition and Consumer Protection (UOKiK) has recently published the assumptions of a bill amending the law of 16 September 2011 on the protection of the rights of buyers of housing units or single-family houses (the developers' law). The bill features an extensive range of new solutions that are aimed to provide greater security to home buyers, in particular in the event of a developer's insolvency or discontinuation of construction work by the developer. The assumptions also apply to cases where a bank terminates the housing escrow account agreement. The Office for Competition and Consumer Protection has a positive view of the developers' law of 2011, but it concludes there is room for improvement in the situation of homebuyers. The adoption of the amended developers' law can, potentially, have far-reaching consequences for parties commissioning projects.

According to the assumptions of the bill, open-ended housing escrow accounts with no security, i.e. ones where the bank transfers funds in accordance with the project schedule but has no control of construction progress, will be closed. In the event the developer faces difficulties, buyers may not recover the funds already spent on an unfinished project. If the bill is adopted, investors will only be allowed to offer two types of escrow accounts: closed-end housing escrow account (where the bank pays the money to the developer only upon the transfer of the title to the flats to the buyers) or open-ended housing escrow accounts secured with an insurance or bank guarantee – so that the buyers can recover all the money they have paid in the event of the developer's bankruptcy. This would require developers to obtain bank or insurance guarantees for significant amounts so as to ensure that the buyers can have all the money they have paid returned to them, which would substantially increase costs to investors.

Moreover, payments into the escrow account made by home buyers are to be linked to the progress of construction work. Banks maintaining escrow accounts will be required to carefully check whether mon-

ey can be withdrawn from the account or whether construction progresses well (e.g. whether the developer has a title to the property, whether the construction permit is valid, whether the developer is not undergoing restructuring or bankruptcy proceedings). In the event any irregularities are found, the bank will be authorised to withhold advances. Additional rights and obligations of the banks maintaining escrow accounts may have a major effect on project costs and the very project implementation process.

The proposed changes concerning housing escrow accounts are even more far-reaching – if the developer decides to discontinue a construction project, the bank will be required to terminate the housing escrow account agreement and return all funds paid into the account to the buyers. After the changes in question have been passed, a separate housing escrow account will need to be established for every investment task, rather than a single account for the property development project as a whole, which is expected to facilitate the enforcement of claims by buyers. UOKiK also suggests that housing escrow accounts can be closed only after the title to the last separate residential unit has been established.

According to the bill's assumptions, protection offered by the developers' law will also cover buyers of completed housing units (until the ownership of the units has been transferred to the rightful buyers) to the same extent it covers people who have agreed to buy the flats at the construction stage. In addition to residential units, the law will also apply to parking spaces in garages, storerooms, etc. To date, they have been governed by a different type of agreements, and they were not afforded the protection of payments offered to funds paid towards the purchase of flats.

The developers' law will also regulate reservation agreements, which not been governed by any special provisions of law before, according to the proposals put forward by UOKiK. Upon the adoption of the bill, the maximum reservation fee would amount to 1% of the price. In selected cases, the reser-

vation fee would be treated as earnest money – were a developer contract not signed due to the developer's fault, the developer would have to return a double amount of the reservation fee. If the contract is not signed due to, for instance, the buyer's failure to obtain a home loan, the fee would have to be returned in full.

The proposed changes also apply to a wide scope of information the developer must publish in the information prospectus (e.g. present the price of flats offered for sale). The bill is also expected to regulate the legal situation of the parties to the developer contract in the event of bankruptcy of the bank maintaining the housing escrow account. A consent of the project financing bank or another mortgage creditor for separation of the residential unit without encumbering the unit's land and mortgage register is to be a mandatory attachment to the developer contact. If no consent is given, it would result in the nullity of the developer contract.

The bill also stipulates a wide range of penalties for developers in the event they fail to provide mandatory protection measures for their payments, including a fine, a community sentence or even imprisonment.

It should be noted that these are only the assumptions of the planned bill amending the developers' law. The final provisions of the law can be significantly altered, both before the bill is considered by the lower chamber of the Polish parliament and while the parliament actually works on it. The proposed changes can be of utmost importance for property developers and the project investment process as a whole as they can result in an extensive range of additional costs and obligations. The projected changes, which are aimed to provide increased protection to buyers of residential units, can achieve their goal, but they can also drive up housing prices and impede the purchase process. At present, there is no information as to when the changes are to be proceeded or when they could actually take effect.

*Julia Kulikowska*

*Aplikant radcowski w Kancelarii Adwokatów i Radców Prawnych*

*Miller, Canfield, W. Babicki, A. Chelchowski i Wspólnicy Sp.k.*