

Performance of construction works in the context of the third party's property right

In some cases, it is necessary to enter the neighbouring building, premises or site of the neighbouring property during the site preparation work preceding the launch of the project or while the proper construction work is already underway.

If this is the case, the investor is required, prior to commencing the work, to obtain the consent of the owner (or lessee) of the neighbouring property, building or premises to enter the property, pursuant to Art. 47.1 of the Act of 7 July 1994 – Building Law. From the investor's perspective, there are two conditions for entering somebody else's property: obtaining the owner's consent prior to commencing the work and the fact that the site preparation or construction work requires the investor to enter the neighbouring building, premises or site of the neighbouring property. Given the nature of the property right and its general integrity, the legislator expressly indicated that it is possible to enter somebody else's property only if the work cannot be completed in a different way that is less inconvenient to the owner. On the one hand, the regulation provides protection to the owner, whose right to property is protected until construction work may not be performed in a manner not interfering with the owner's rights; on the other, it gives assurance to the investor that their project will be completed even if it would outwardly appear difficult, or even impossible, due to the integrity of the third-party property right.

The investor and the owner of the neighbouring property, building or premises should agree on the anticipated manner, scope and time for which the relevant property will be used and on the amount of compensation thereunder, if any. In this respect, it is evident that the parties should strive to reach

a consensus that, on the one hand, would be attained by ensuring that the work will be conducted with the least possible impact on the building, premises or property and by completing the work as promptly as reasonably possible or, on the other, by fixing a due compensation for using the third party's property right by the investor. In consideration of the foregoing, as a rule, the investor may enter the neighbouring building, premises or property in order to complete the work after obtaining the owner's permission. However, if the investor and the owner fail to reach agreement, the administrative authority competent for architecture and construction, i.e. county or voivodship governor (starosta or wojewoda, respectively), is authorised to issue a decision allowing the investor to perform preparation work or construction work by entering the neighbouring property held by a third party. Such interference is allowed only if the involved parties fail to reach agreement. The investor is required to request the relevant decision for the procedure to be initiated. Then, the competent authority shall resolve, by way of decision issued within 14 days of the request date, the issue regarding the necessity to enter the neighbouring building, premises or site of the neighbouring property. In the first place, the competent authority examines the issue of necessity to enter the property – if it is possible to perform the work in a manner not interfering with the third-party property right, the decision on entering the neigh-

bouring property is not given. However, if the competent authority confirms the necessity, as defined in the investor's request, it will also define the limits of such necessity and the conditions for using the neighbouring building, premises or property in its positive decision. It should be noted that the short statutory term of 14 days for issuing the decision is meant to set up a convenient situation for the investor who is frequently bound by deadlines and schedules, and any protracted downtime can lead to liability for damages.

Lending the third party's property to the investor means certain rights to the investor, but it also involves specific obligations on the part of the investor. It should be noted that the decision allowing the investor to enter the neighbouring property does not confer the right to unlimited use of the third party's property. The investor may conduct work on the terms defined in the decision, which typically authorises them to stay on the property while the work is underway, fix equipment necessary to conduct the work and perform certain required ground works. However, the decision does not allow, in principle, the investor to set up, install or perform on the third party's property building elements which could be left there permanently.

Regardless of where the permit for use of the property was obtained from, following the completion of the works, the investor is required to repair damage resulting from the investor's activities on the neighbouring property, building or premises on the terms defined in the Civil Code. Pursuant to Art. 363.1 of the Civil Code, damage can be repaired by the restoration of the prior condition or the payment of a specified amount of money.

It should be noted that the above provisions do not apply to the occupation of a roadway or part of roadway by the investor. The investor may occupy a roadway or a part thereof upon fulfilling the requirements specified in separate regulations set forth in the applicable sections of the Public Roads Act of 21 March 1985 and the Regulation of the Council of Ministers of 1 June 2004 on the terms for granting licence to occupy a roadway.

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