

Property division in the light of the Property Management Act

The Property Management Act of 21 August 1997 (consolidated text: Official Journal of 2015, item 782) (the "Property Management Act") addresses, among other things, property division.

In accordance with Art. 92 of the Property Management Act, the provisions of Chapter III do not apply to properties located in areas designated as agricultural and forest land under local zoning plans, and if there is no local zoning plan, the provisions do not apply to properties used as agricultural and forest land, unless property division would result in the need to designate new roads which would not be necessary access roads to properties comprising parts of farms, or result in division of land plots with an area of less than 0.3000 ha. Properties used as agricultural and forest land include properties registered in the cadastre as agricultural land or forest, land covered with trees and shrubs as well as surface mining land in use comprising a part of agricultural properties, idle land and roads, if no relevant planning permit is in place.

In principle, property may be divided if the division complies with the local zoning plan (Art. 93 of the Property Management Act). If no local zoning plan is in place, the provisions of Art. 94 of the Property Management Act apply (see below). Compliance with a local zoning plan refers to both land designation and the possibility to develop the land plots to be separated. It is permissible to divide a property located in an area designated as agricultural and forest land under local zoning plans, and if there is no local zoning plan, an area used as agricultural and forest land, which would result in separation of a land plot with an area of less than 0.3000 ha, provided that the land plot will be used to enlarge a neighbouring property or an adjustment would be made to its borders with the neighbouring properties. What is important is that property division is not permissible if the land plots to be separated would not have access to a public road. In accord-

ance with the Property Management Act, access to a public road is deemed to include separation of an internal road and establishment of relevant easement rights for the benefit of the separated land plots, or establishment of the right of way on other roads if it is not possible to separate an internal road from the property being divided.

If there is no local zoning plan – if the property is located in an area for which there is no obligation to prepare such a plan – the property may be divided if: (i) the division is not in conflict with other regulations, or (ii) the division complies with the provisions of the planning permit. If in such case an application for property division is filed: (i) after six months from the date on which the commune or municipal authorities passed a resolution to commence work on the preparation of a local zoning plan, or (ii) after the local zoning plan was made available for public inspection, the proceedings concerning property division are suspended until the local zoning plan is adopted, but not longer than for six months from the date on which the application for property division was filed.

Property division is made under a decision by the commune head (*wojt*), town mayor (*burmistrz*) or city mayor (*prezydent*) to approve the division. Property may also be divided under a relevant court judgment. Both the decision and court judgment form the basis for making a relevant entry in the land and mortgage register and in the cadastre.

The Property Management Act also provides for making exceptions from a local zoning plan. In accordance with Art. 95 of the Property Management Act, irrespectively of the local zoning plan, and if no local zoning plan is in place – regardless of the planning permit, property division may be carried out for the following purposes:

1) to remove co-ownership of property developed with at least two buildings, built under a building permit, if the division involves separation, for the benefit of individual co-owners specified in a joint application, of the buildings with land plots necessary for proper use of the buildings;

2) to separate construction land, if a building has been built on the land plot by its autonomous possessor in good faith;

3) to separate part of property, to which the ownership title or perpetual usufruct right were acquired by operation of the law;

4) to satisfy claims to a part of property arising under the Property Management Act or other acts;

5) to comply with the regulations pertaining to ownership transformation or liquidation of state-owned or local government-owned enterprises;

6) to separate part of property covered by a decision on the location of a public road;

7) to separate part of property covered by a decision on the location of a railway line;

8) to separate part of property covered by a permit for construction of a public airport within the meaning of the Act on Detailed Rules of Preparation and Implementation of Projects Related to Public Airports, dated 12 February 2009;

9) to separate part of property covered by a permit for implementation of a project within the meaning of the Act on Detailed Rules of Preparation for Implementation of Projects Related to Flood Protection Structures, dated 8 July 2010;

10) to separate construction land required to use a residential building;

11) to separate land plots in restricted areas.

Property division is carried out in response to a submitted application or *ex officio* when the division is made for public purposes or when a property is owned by a commune or municipality and perpetual usufruct rights to the property were not granted.

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