

Proposed changes to the right of perpetual usufruct

The right of perpetual usufruct of land underlying multi-dwelling buildings will be abolished by operation of law on 1 January 2017 and replaced by freehold titles, according to the Ministry of Infrastructure and Construction's plans.

The bill stipulates that the conversion of the perpetual usufruct right will only apply to those multi-dwelling buildings in which the ownership of at least one unit has been separated out. In such an event, individual flat owners' shares in the right of perpetual usufruct to land underlying the building will be automatically converted into ownership. Therefore, it follows that the Act will not apply to housing-cooperative apartment blocks where none of the residents had their cooperative property ownership right or cooperative housing tenancy right to a unit converted into full ownership right.

The right of perpetual co-usufruct to land is to be converted into co-ownership by operation of law. The conversion will be confirmed by way of a certificate which will be sent to every perpetual co-usufructuary of land to the address indicated in the register of land and buildings. In the case of land owned by the State Treasury, the certificates will be issued by the county governor (*starosta*) or, in the case of land owned by the municipality, by the relevant village head (*wojt*) or city mayor (*burmistrz* or *prezydent*). Moreover, all the interested parties should receive the certificate within six months of the act's entry into force. The certificates should also specify the amount of the so-called conversion fee. In addition to the addressees referred to above, the certificates will also be sent to land and mortgage register courts which maintain land and mortgage registers for the properties subject to conversion.

The bill stipulates that interests in the right of perpetual usufruct will be converted into co-ownership against a fee. The Ministry suggests that the conversion fee be paid annually for a period of 20 years. Its amount should be equal to the annual fee for perpetual usufruct of land as at 2016. If one decides to have their cooperative property owner-

ship right to a unit converted into separate ownership after the date of the Act's coming into force, the conversion fee will be equal to the fee for perpetual usufruct of land effective at the time. The fee will be subject to reassessment, though no more often than once every five years, and it will be determined on the basis of the GUS real property price change index or, optionally, the inflation rate. In the event of sale of the flat, the obligation to pay the conversion fee will transfer to the buyer. Details of the debt to the municipality or the State Treasury in connection with the conversion of the right of perpetual usufruct into ownership will also be disclosed in the property's land and mortgage register. Moreover, it will be possible to pay the whole conversion fee on a one-off basis while obtaining a discount on that account.

In accordance with the objectives set, the projected bill is expected to facilitate conversion of the right of perpetual usufruct of land on which multi-dwelling buildings stand into ownership. Currently, the request to convert the perpetual usufruct right into ownership must be submitted by perpetual co-usufructuaries who hold at least half of interests in the property. However, if even just one of perpetual co-usufructuaries objects to the request, the competent authority must stay the proceedings, while the case is forwarded to a court of common jurisdiction which decides on approval to carry out activities outside the scope of ordinary management. This, in turn, protracts the conversion of the right of perpetual usufruct into ownership significantly. Moreover, the court proceedings do not guarantee that perpetual usufruct can actually be converted into ownership at all.

Another aspect of the projected bill is the abolition of the obligation to pay the fee for perpetual usufruct of land upon the con-

version of the right into the ownership title. Currently, the fee for properties let on perpetual usufruct which are used for housing purposes amounts to 1% of the land's value, and it may be reassessed once every three years. Appraisals performed by expert property appraisers are the basis for determining the fee. It is frequently the case that such appraisals raise controversy, which often leads to appeals being filed with the local government boards of appeals. In many cases (in large cities in particular), fees for perpetual usufruct of land can be raised significantly.

It should also be noted that perpetual usufruct fees for land let into usufruct for 99 years should be paid throughout the whole period. In the event of the projected transformation into ownership, the conversion fee will be payable for just 20 years.

It should also be noted that perpetual usufruct is a right limited in time and it expires upon the lapse of the period for which the land has been let into usufruct. In such an event, the land is returned to the owner, i.e. the State Treasury or the municipality. Compensation is paid in respect of buildings and structures erected on the land. While the perpetual usufructuary may request extension of the perpetual usufruct right for an additional 40 to 99 years, it can be the case that the request is not granted and the flat is lost in exchange for compensation. Moreover, the extension of the perpetual usufruct right also involves having to pay further annual fees for the right.

Accordingly, the Act appears to be beneficial to flat owners. However, its final shape will be revealed only upon the conclusion of the legislative process. Though the idea to grant ownership to residents of multi-dwelling buildings should be assessed as positive, the question arises why the solution is proposed only to a specific social group since this can violate the constitutional principle of equal legislative treatment.

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