

Key assumptions of the reform granting ownership to perpetual usufructuaries

The Polish government has resolved to liquidate perpetual usufruct by granting real estate ownership to perpetual usufructuaries. Pursuant to the bill prepared already in the summer of 2016, the perpetual usufruct of properties currently used for housing purposes will be converted into ownership.

The bill is a clear step to remove perpetual usufruct from the legal system completely. The planned act is expected to resolve the issue of the conversion of perpetual usufruct into ownership in cases where tenants' associations fail to reach agreement. It is also frequently the case that perpetual usufruct is a severe burden on the entitled parties as it involves paying annual fees for perpetual usufruct, which are often substantial. Moreover, the fees can be revised upwards if the property's value goes up, which adds to the financial burden of perpetual usufructuaries.

Pursuant to the bill, the conversion of perpetual usufruct will apply to interests in perpetual usufruct of land developed for housing purposes related to the right of separate ownership to premises. This practically means that the right of perpetual usufruct of land property will be converted into ownership by operation of law on the date specified in the act. This will apply to land on which a building or buildings have been erected where at least half of the units – divided into separate units or not – are housing units and at least one unit represents separate ownership. In the initial version of the bill, these were the only properties that would be subject to the conversion of perpetual usufruct into ownership. However, the bill has evolved and the Council of Ministers currently plans to extend the regulation to single-family houses built on land held in perpetual usufruct.

The conversion of perpetual usufruct will not be encumbrance-free – encumbrances related to perpetual usufruct will continue to be a burden on the converted right, while the buildings and installations previously owned as separate property will become part of the land. Disclosure of perpetual usufruct conversion in the property's land and mortgage register will be made pursuant to an official document issued by the competent

authority depending on who owns the land (county governor, or *starosta*, for the State Treasury, heads of the regional Agricultural Property Agencies (ANR) or Military Property Agencies (AMW), or commune head or *wojt* (town or city mayor or *burmistrz*, county board or voivodship board) in the case of properties owned by a local government unit. Originally, it was supposed to be a certificate; during the consultations, it was agreed that the document would be a decision of the competent authority. The decision will be issued upon request or *ex officio*. Submission of a request can accelerate the issuance of the document; obtaining an *ex officio* decision can take up to nine months of the act's coming into force. The decisions will also be sent directly to land and mortgage register departments of district courts.

Perpetual usufruct will be converted into ownership against a fee, i.e. the so-called annual conversion fees. The decision will determine the amount of the fee and the term over which the fees are to be paid by the owners (former perpetual usufructuaries). The fee will be equal to the annual fee for perpetual usufruct in the amount effective as at 1 January 2017 – according to the present wording of the act. It is possible, though, that the amount of the fee can still be revised.

The bill stipulates that in the event of the conversion of the right of perpetual usufruct to a flat, parking space or garage, the fee will be payable in instalments over a period of 20 years. The former perpetual user will be required to pay a single annual instalment. Users of non-residential units will pay the conversion fee for a period of 33 years.

In practical terms, it would mean paying the annual fee until full repayment of perpetual usufruct by perpetual users to whom ownership was transferred; additionally,

the bill states that the fee can be reassessed, just as the existing perpetual usufruct fee is reviewed.

Pursuant to the bill, the conversion fee can be made in a single payment. To encourage perpetual usufructuaries to choose this option, the eligible parties will be able to pay discounted fees determined pursuant to a regulation of the voivodship governor, in the case of properties held by the State Treasury, or a resolution of the competent decision-making body of the local authority unit, in the case of properties owned by communes, municipalities, counties or voivodships. For real properties held by the State Treasury, the discount can be up to 50% of the amount payable.

The obligation to pay the fee is associated with the property, i.e. it is transferred to every owner from time to time and at all times upon the conversion until the conversion fee has been paid in full.

The act will apply not only to properties which are currently fit for conversion (the condition of having separated ownership of one unit at least). Subsequent separation of the unit will result in the conversion of perpetual usufruct to the entire property into ownership upon the entry of separate ownership of the unit to the land and mortgage register.

At present, the government is working on the details of the bill. The entry into force of the act would definitely benefit perpetual usufructuaries whose fees would be significantly reduced. Furthermore, their costs would not grow substantially over the coming years as the properties' value increases, which currently is the case for perpetual usufruct. Local authorities will be among the losers as they will be barred from receiving annual fees over multiple years. Some local authorities have not managed to update the annual fee yet – the process can even take several years – which could cause further losses upon conversion.

The authors of the bill expect that it will come into force this autumn. Up until that date, its shape can still be modified, but the key assumptions should stay the same.

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