

Legal opinion

Draft of new Developer Act: extra requirements for developers, heightened protection for buyers

Draft of new Developer Act

In December 2019, the new government included in its legislative agenda the amendment to the so-called Developer Act – the informal name under which the Act of 16 September 2011 on the protection of the rights of buyers of apartments and single-family houses is widely known – that the previous cabinet had been working on. The draft legislation, which by now has taken the form of an entirely new law, meant to repeal and replace, rather than merely amend, the existing one, introduces some very important changes from the point of view of the property development sector. Entitled “Act on the protection of the rights of buyers of apartments and single-family houses and on the Developer Guarantee Fund” (and referred to hereinafter as the “**New Developer Act**”), it is expected to be approved by the Council of Ministers in the first quarter of 2020.¹

Current law deemed insufficient

The impulse to amend the Developer Act arose from the findings of a review that the Office of Competition and Consumer Protection (UOKiK) carried out two years after its enactment.² The review concluded that the protection that the Act affords home buyers should be made more effective.

¹Draft Act amending the Act on the protection of the rights of buyers of apartments and single-family houses, access: <https://legislacja.rcl.gov.pl/projekt/12312251/katalog/12513237#12513237>,

²The results of the review were presented in Information from the Council of Ministers on the effects of the functioning of the Act of 16 September 2011 on the protection of the rights of buyers of apartments and single-family houses (Journal of Laws no. 232, item 1377), together with proposed changes, access: <http://orka.sejm.gov.pl/Druki7ka.nsf/0/C7076B19DA40D2A7C1257CEE002E19BE/%24File/2454.pdf>.

Increased protection of home buyers' money

The most important changes that the new Developer Act will bring concern protection of the money that buyers pay developers for homes that are under construction, upon signing the developer agreement.

Under existing law, developers are required to use one of several means of protecting this money: a closed escrow account; an open escrow account with additional security in the form of a bank- or insurance guarantee; or an open escrow account without additional security.

In practice, developers tend to use the last option. But this increases the risk that the buyer will lose their money in the event of the developer's bankruptcy.

To forestall that, the new law introduces additional mechanisms aimed at protecting home buyers' money. In the most important change, developers will be required to pay into a Developer Guarantee Fund (“**the Fund**”), whose resources will be used to compensate the customers of bankrupt developers. Contributions to the Fund will depend on the amounts paid by customers into escrow, and will be expressed as percentages. A separate regulation will lay down the rates of contributions to the Fund.

The new Developer Act also introduces important changes and additional provisions pertaining e.g. to the way that banks manage escrow accounts; banks' audit powers; or the contents of the developer agreement. (With respect to the latter, the developer will be required to obtain the bank's consent for the establishment of the right of separate, unencumbered ownership of the apartment; and will have to include more details in the information prospectus). It also introduces the concept of reservation agreement for the first time.

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