

Legal opinion

New Developer Act signed into law

On 8 June President Andrzej Duda signed into law the so-called New Developer Act, whose official name is the Act of 20 May 2021 on the protection of the rights of buyers of apartments and single-family houses and on the Developer Guarantee Fund.

One of its key provisions is to establish a fund called the Developer Guarantee Fund (henceforth “the Fund”), with the aim of increasing protection for homebuyers in the event that the developer declares bankruptcy.

The Fund will consist of money from the following sources:

- contributions payable by developers;
- interest earned on its bank account, which will be a dedicated sub-account of the Insurance Guarantee Fund (UFG), and on time-deposits of its money;
- claims against developers or banks, transferred from buyers to UFG (buyers’ claims will transfer to UFG automatically when the Fund refunds their escrow);
- money recovered from bankrupt developers’ estates;
- loans obtained by UFG for the benefit of the Fund;
- other proceeds.

Developers will pay contributions to the Fund expressed as a percentage rate of payments made by buyers into escrow as part of the execution of the developer agreement. The Act lays down their maximum levels. In its draft text, they were set at 2% for open-ended escrow accounts and 0.2% for closed escrow accounts. But during its processing in the Senate, they were halved to 1% and 0.1%, respectively.

Actual rates will be determined by the competent minister in charge of construction, housing, and urban planning and development, in consultation with the minister in charge of financial institutions, after obtaining an opinion from UFG and from the Office of Competition and Consumer Protection (UOKiK)’s chief.

Significantly, under Article 41 of the New Developer Act, the buyer is entitled to refuse to take over ownership of the property from the developer in case a major defect is found. In that case, the developer has 14 days to either acknowledge the defect or to refuse to acknowledge it, giving reasons for the refusal. Failure to do either within this period is treated as acknowledgement of the defect.

In principle, an acknowledged defect has to be removed by the developer within 30 days of the signing of the acceptance protocol in which the defect was reported. (There is also the option of the buyer removing it at the developer’s expense.) The buyer is entitled to withdraw from the agreement if an acknowledged major defect is not removed within this period.

Most of the provisions of the New Developer Act will only come into force 12 months after its publication in the Journal of Laws. But some parts, mainly those pertaining to the Developer Guarantee Fund, will take effect already 30 days after publication.

The New Developer Act will supersede the Act of 16 September 2011 on the protection of the rights of buyers of apartments and single-family houses.

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