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Real Estate Legal News

The most important legal changes in real estate

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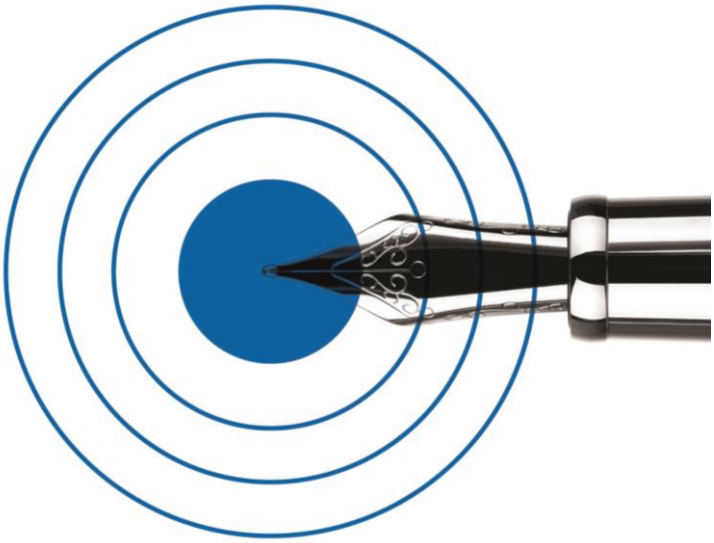

Amendment to the Civil Code

On 1 July 2020, the expected amendment to the Civil Code took effect.

"Expected amendment" is not just a figure of speech, as most of the changes eliminate problems and shortcomings of the existing legislation that have been encountered in practice. Since most of the changes concern the real estate sector, we present an overview of the most important ones in this issue of Real Estate Legal News.

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Pre-emption right (again) revoked

The most discussed and welcome change to the Civil Code is the revocation yet again of the pre-emption right of co-owners to shares in real estate.

The development of the pre-emption right since the adoption of the new Civil Code is reminiscent of a line from a famous Czech fairy-tale "I retract what I have retracted, I promise what I have promised." The catch is that whoever has encountered the pre-emption right in practice will confirm that it was definitely not a fairy-tale.

In the new Civil Code in 2014, the former broad legal pre-emption right between co-owners was abolished.

This situation did not last long, however, and the pre-emption right was returned to the Civil Code, despite justified criticism, especially by real estate agents. The legal pre-emption right thus again significantly complicated the sale of housing units associated with a co-ownership share in the non-residential space, i.e. the owner's right to use a cellar or a parking space in a common garage. If the parties wished to follow the legal procedure when selling the apartment, they had to enter into a purchase agreement, submit it to the other co-owners with an offer to buy the co-ownership share, and then wait three months to see if the co-owner would exercise their legal pre-emption right. In an association of unit owners, where there are often over a hundred co-owners who had to be called to exercise the pre-emption right, it was an administrative nightmare. If the pre-emption right was not exercised, it meant "only" a three-month delay in buying the share. However, if a co-owner exercised the pre-emption right, it meant the cancellation of the purchase agreement with the original buyer and all the consequences arising therefrom.

The current amendment changes the existing rules again and, it must be said, for the better.

Now the legal pre-emption right of co-owners applies only in cases where the co-ownership was established by acquisition in the event of death (e.g. a will) or another fact that the co-owners could not voluntarily influence. In such cases, the other co-owners will have a pre-emptive right to the transferred share for six months from the date the co-ownership arises. An exception is the transfer of a share to another co-owner, spouse, sibling or direct relative.

The pre-emption right also remains for the co-owners if one of the co-owners transfers its share free of charge (for example, donates it). In such a case, the co-owners have the right to repurchase the share at the usual price.

Association of unit owners and co-ownership of apartments

The amendment to the Civil Code also brings significant changes in the legislation governing associations of unit owners. Most are pragmatic and based on experience with the (non)functionality of the current regulation. Some changes will facilitate the development of residential projects, others are intended to avoid frequent stalemates in associations of unit owners.

The main changes include the following:

Establishing the association of unit owners

An association of unit owners can be established by the sole owner of all units in the building. This will typically be a developer who establishes an association of unit owners before selling the units to new owners. The association of unit owners will then need to be established in a building with at least five units, four of which are owned by various people (so far three people were enough).

Newly, it will not be possible to establish an association of unit owners directly in the owner's declaration on the division of the right to the building and land ("owner's declaration").

The amendment further specifies that a notarial deed of the decision of the constituent meeting of the association of unit owners on the adoption of articles of association must be drawn up. However, this does not apply if the association of unit owners is established by the sole owner of all the units. In such a case, a notarial deed is not necessary; nor is a notarial deed required in the case of a change to the articles of association.

This change largely simplifies the administration. On the other hand, it carries the risk that an owner who is ignorant of the law may draw up articles of association containing invalid provisions.

The consent of all unit owners will no longer be required for the approval of the articles of association. It will suffice if the majority agrees on their content, unless a higher number is required by the articles of association. This change can free a number of associations of unit owners, in which the articles of association were not approved, perhaps only due to the disagreement of a troublemaking sole owner.

Change to owner's declaration

The amendment to the regulation on approving changes to the owner's declaration is very promising.

Approving the changes to the declaration was the Achilles heel of every association of unit owners. If the association of unit owners needed to install new common utility lines in the building, build an elevator or make any other changes to the common parts of the building, the consent of all unit owners was required.

In some cases, the consent of all unit owners will no longer be necessary, but the consent of a majority will suffice. A majority of the votes is enough whenever the change concerns:

- common parts of the building, where the size of the share in the common parts does not change;
- the purpose of using the apartment at the request of its owner;
- rules for the management of the building and land and the use of common parts, if specified in the declaration.

If the change affects the rights and obligations of all unit owners, then the consent of all owners will continue to be required.

The consent of the specific owner of the unit will now be required whenever the change affects their rights and obligations.

Compulsory sale of a unit

A simplification has also been introduced in the case of the compulsory sale of a unit by an owner who is in breach of their obligations in a way that substantially restricts or prevents the exercise of the rights of other unit owners.

Following a warning from the association of unit owners or the person responsible for the administration of the building, the property manager may, with the consent of the majority of owners, file a motion with the court for an order for compulsory sale. The warning must be in writing, contain the reason for its issuance, warn of the possibility of filing a proposal for an order for the sale of the unit, and call for the owner to refrain from the breach of obligations or to eliminate the consequences thereof. The owner must be given a reasonable period to rectify the situation, which must be at least 30 days.

Transfer of debts associated with the unit to a new owner

During the transfer of the unit, the debts associated with the unit (e.g. outstanding contributions to the repair fund) are also transferred to the new owner, if they could and should have found out about these debts.

When transferring a unit, according to the amendment, the transferor will submit to the acquirer confirmation of the (non)existence of debts associated with the unit issued by the person responsible for the administration of the building. If the confirmation does not list certain debts, it is deemed that the acquirer could not find them and the transferor will therefore remain liable for their payment.

Regulation of short-term accommodation

The amendment introduces a rule that targets mainly short-term accommodation operators (e.g. Airbnb). It is the duty of the unit owner to notify the building manager in advance of business or activities in the apartment that may lead to a protracted disturbance of the usual peace and order in the building.

This is followed by the obligation of the unit owner to notify the building manager without undue delay of the number of persons who will live in the apartment. This change is especially important due to the billing of services. Previously, only those who lived in the apartment for more than two months were taken into account when determining the billing of services, which made no sense when the apartment was used for short-term accommodation and the numbers of reported persons were usually significantly underestimated. The amendment should prevent this and ensure that the number of reported persons corresponds to the actual number of persons who continuously use the housing unit.

Other changes in brief

Obligation to notify construction modifications of the apartment

Unit owners are obliged to notify the building manager in advance of any planned construction modifications inside their apartment. This obligation also applies to construction modifications for which the Building Act does not require a permit or notification.

If the owner is renovating their apartment, they must allow the building manager to verify that the construction modifications do not endanger, damage or alter the common parts of the building, and upon prior notification allow access to the apartment, if necessary.

Contractual penalty now permitted for apartment leases

Formerly prohibited, now permitted. The amendment explicitly allows you to validly negotiate a contractual penalty in the lease agreement for an apartment or house in the event of a breach of the tenant's obligations. However, the sum of the contractual penalty and any security deposit may not exceed three times the monthly rent.

Cancellation of the deadline for the settlement of advance payments

The four-month period for billing advances for services associated with the use of an apartment is cancelled. Likewise, the determination of the due date of arrears or overpayment of advances is cancelled. None of these terms is currently regulated by the Civil Code.

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