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## **THE PROCESS OF TRANSFORMATION OF RIGHTS TO RESIDENTIAL UNITS IN HOUSING COOPERATIVES IN POLAND**

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**Key words:** housing cooperative, occupancy right to a residential unit in a housing cooperative, ownership right to a residential unit in a housing cooperative, strata title to a residential unit.

### **A b s t r a c t**

This article deals with the rules and procedures for transformation of rights to apartments in housing cooperatives. The transformation means changing rights of housing cooperative members (occupancy right, ownership right) into strata titles. Housing cooperatives with an unregulated legal status of land are only conditionally allowed to transform the right to occupancy into the right of ownership to a residential unit. The rate of transformation of rights to apartments in housing cooperatives depends on the legal regulations which govern the procedures and financial conditions. This study has demonstrated that most transformations concern a change of occupancy right to an apartment into strata title. Consequently, the percentage of apartments in housing cooperatives to which tenants held occupancy right fell from 23.7 to 6.5% during the analyzed period of time.

## **PROCES PRZEKSZTAŁCANIA PRAW DO LOKALI MIESZKALNYCH W SPÓŁDZIELNIACH MIESZKANIOWYCH W POLSCE**

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**Słowa kluczowe:** spółdzielnia mieszkaniowa, spółdzielcze lokatorskie prawo do lokalu mieszkalnego, spółdzielcze własnościowe prawo do lokalu, odrębna własność lokalu.

### **A b s t r a c t**

W opracowaniu przedstawiono zasady i procedury przekształceń praw do lokali mieszkalnych w spółdzielniach mieszkaniowych. Przekształceniami objęte są prawa spółdzielcze (lokatorskie prawo do lokalu mieszkalnego oraz spółdzielcze własnościowe prawo do lokalu) w prawo odrębnej własności.

Warunkowo w spółdzielniach mieszkaniowych o nieuregulowanym stanie prawnym gruntów przepisy prawa dopuszczają przekształcenie prawa lokatorskiego w spółdzielcze własnościowe prawo do lokalu. Intensywność procesu przekształceń praw do lokali zależy od przepisów prawa, które określają procedury i warunki finansowe. Badania wykazały, że najwięcej przekształceń dotyczy spółdzielczego lokatorskiego prawa w odrębną własność lokalu. W związku z tym udział lokali lokatorskich w strukturze własnościowej mieszkań w zasobie spółdzielni w badanym okresie zmniejszył się z 23,7% do 6,5%.

## Introduction

Housing cooperatives were created to satisfy one of the primary needs of people, that is having own apartment, so as to be able to start and keep a family. The tangible assets of housing cooperatives comprise residential buildings, which in Poland make up the largest, structurally uniform resource of residential space, consisting of 3.17 million apartments (24.4% of all residential resources).

Two acts form the legal foundation of housing cooperatives: Cooperative Law and the Act on Housing Cooperatives. The Act on Housing Cooperatives introduced another form of the right to an apartment, next to the existing occupancy and ownership rights, that is a separate form of the ownership of an apartment. Hence, it opened up a possibility to transform either of the two former rights into a strata title.

The process of transforming property rights in housing cooperatives depends on the regulations formulated in the Act on Housing Cooperatives, which has been amended several times over the recent years and disputed by the Constitution Tribunal. The rules of property right transformations were different under the subsequently amended acts. The least favourable solutions, from the point of view of housing cooperative members, came into force on 15 January 2003; these regulations were far behind the world's standards, which the Polish Law was striving to attain, in terms of transferring the right of ownership to housing cooperative members. With housing cooperatives given two years for the transfer of rights and no penalties foreseen in case of failure to meet the deadlines, members of housing cooperatives could rightfully complain that their rights were ignored, limited and abused. After numerous parliamentary and government debates, the Act on Housing Cooperatives was amended one more time on 3 June 2005. The regulations included in that version of the law changed for the benefit of housing cooperative members, but the Constitution Tribunal resolved that some of the new regulations were not in compliance with the Constitution because they contravened the constitutional rule of protection of property and property rights. Consequently, on 14 June 2007, the Lower House of the Polish Parliament (the Sejm) amended

the Act on Housing Cooperatives again, and the amended law became effective on 31 July 2007. The amended act contained rules for the transformation of occupancy rights into strata titles which were much better for tenants and which were nicknamed accordingly as “a right to buy for a zloty”.

The purpose of this article is to evaluate the process of the transformation of property rights to units in housing cooperatives as governed by the current law. The analysis of the transformation covered the development prior to 31 July 2007, when the amended Act on Housing Cooperatives came into force, and afterwards. The data gathered by the Association of Housing Cooperatives in the Polish Republic in Warsaw were used for this purpose.

### **Rights to residential units in housing cooperatives**

In compliance with the Act on Housing Cooperatives, there are the following types of property rights in buildings owned by housing cooperatives:

- occupancy right to a residential unit in a housing cooperative,
- ownership right to a unit in a housing cooperative,
- strata title to a residential unit.

The occupancy right to an apartment in a housing cooperative arises when a housing cooperative member enters into a civil law contract with a housing cooperative. The member is obliged to pay his/her housing contribution to the cooperative, as stipulated in the cooperative’s statute, which is equal to the difference between the construction costs per given apartment and the support obtained by the cooperative from the public funds. The housing contribution does not cover the total costs of building a given apartment. If some of the housing contribution has been financed from a loan drawn by the cooperative to finance the costs of constructing a given apartment, then the member tenant is obliged to participate in paying off the loan together with the due interest proportionally to the share that is attributed to his/her apartment (DZIENIS, KANIEWSKI 2001). The housing cooperative is obliged to transfer the right of use (for indeterminate or determinate time) of a given apartment, which the cooperative owns or co-owns, to the member tenant. The occupancy right to a housing unit in a cooperative is non-transferable, is not a hereditament, may not be subject to execution and can belong to either one person or to a married couple. The housing contribution, in contrast, is a hereditament. The occupancy right to a housing unit in a cooperative entails a membership in the given cooperative and terminates when the membership terminates. Further, a housing cooperative member has a right to claim purchase of the ownership right to the apartment to which they hold occupancy right (BOŃCZAK-KUCHARCZYK 2008).

The ownership right to an apartment in a housing cooperative is a limited real estate right. It is, however, transferable and can be traded to all persons, including non-Polish citizens (NAPIÓRKOWSKA-BARYŁA, OSIECKA 2009). This right is a hereditament and may be subject to execution. If the ownership right to an apartment in a housing cooperative belongs to more than one person, only one of these persons can be a housing cooperative member, unless the buyers of the right are husband and wife. A housing cooperative member who is applying for an ownership right to an apartment enters into a contract with his/her housing cooperative for constructing this apartment. This contract, done in writing or else null and void, should oblige both parties to enter into a contract after the apartment has been built, which will grant the resident the ownership right to his/her apartment. A necessary condition for the acquisition of an ownership right to an apartment in a housing cooperative is the payment of a building contribution in the amount equal to the total costs of the construction investment (*Opracowanie...* 2003). At present, housing cooperatives cannot establish new ownership rights to apartments in housing cooperatives. The only exception is the transformation of occupancy rights into ownership rights to apartments in housing cooperatives with an unregulated legal status of the land they occupy.

The strata title to residential and non-residential units, with a percent share in the co-ownership of a multi-space garage, can encompass both a separate residential apartment or a lot of other than residential use. Definitions of both types of units are given in the Act on Ownership of Building Units. A separate residential unit, in the light of this legal act, is a room or rooms separated by permanent walls, to be used for permanent human residence, which, alongside other amenities, serve to satisfy people's housing needs. A non-residential lot (a unit used for commercial purposes) is a unit of analogous spatial, technical and construction properties, but of other than residential use, e.g. office, shop or services. Other amenities can belong to a housing cooperative lot (as their composite parts) such as an attic, a cellar, a storeroom, etc., even if they are not attached directly to the lot, or they lie within the boundaries of the premises outside the building in which the separated lot is located. Once the ownership right to a given unit is separated, the unit owner has a right to a share in the common property, which stems from the ownership of a unit in the housing cooperative. The common elements consist of the land and these parts of the building or facilities which are not used exclusively by unit owners. The strata title never terminates, is transferable, can be inherited and can be subject to execution (SIUDEM 2003).

## **Rules of the transformation of rights to housing units**

Rules for transforming rights to housing units in housing cooperatives (as well as establishing an ownership right to a unit in a housing cooperative) have been modified several times. These changes most often concerned the procedures, but also affected the financial conditions imposed on such transformations. The Act amended on 14 June 2007 nullified the right of housing cooperatives to demand that a member tenant holding an occupancy right to his/her apartments pay the difference between the market value of the apartment and the valorised value of the remitted housing contribution. The amended act also nullified the obligation to pay off credits and loans taken by the housing cooperative to finance repairs and refurbishment of the building proportionally to the share attributed to a given apartment. For hundreds of thousands of housing cooperative members, who found the previous financial conditions unacceptable, these amendments opened up a way to transform an occupancy right to a strata title. Under Article 12 of the Act on Housing Cooperatives, on written application by a member holding occupancy right to an apartment, a housing cooperative is obliged to enter into a contract with the applicant, in which it will transfer the property right to the given apartment to the applicant after he/she satisfies the following conditions:

- remits the payment of the part attributable to the given apartment of the housing cooperative's obligations incurred by the construction works, as specified in Article 10, item 1, point 1, and in particular, the respective part of the cooperative's bank loan with due interest, and if the cooperative has taken advantage of any support provided with the public funds or from other sources, the member should remit the payment of that part of the remitted credit that falls on the given apartment in the amount equal to the sum remitted by the cooperative to the state budget,

- remits the payment of any debts arising from the fees as listed in Article 4, item 1.

Under Article 17 of the Act on Housing Cooperatives, on written application filed by a member of a housing cooperative or a non-member who holds occupancy right to an apartment, the housing cooperative is obliged to enter into a contract with the applicant, in which it will transfer the property right to the given apartment after the applicant fulfils the following conditions:

- remits the payment of the share attributable to the given apartment of the housing cooperative's obligations incurred by the construction works, and in particular the respective share of the bank credit with due interests,

- remits the payment of any debt arising from the fees as listed in Article 4, item 1.

Table 1 shows the structure of domestic units divided according to the legal titles of occupants in housing cooperatives in Poland.

Table 1  
Structure of rights to domestic units in housing cooperatives in Poland

| Legal title to a domestic lot                     | As of 31.07.2007 |       | As of 31.08.2009 |       |
|---|------------------|-------|------------------|-------|
|   | thousand         | %     | thousand         | %     |
| Occupancy right to a lot in a housing cooperative | 2 534.00         | 72.40 | 2 271.00         | 64.90 |
| Ownership right to a lot in a housing cooperative | 830.00           | 23.70 | 227.00           | 6.50  |
| Strata title                                      | 87.00            | 2.50  | 956.00           | 27.30 |
| Lease   | 21.00            | 0.60  | 18.00            | 0.50  |
| Lack of any legal title                           | 28.00            | 0.80  | 28.00            | 0.80  |

Source: the author, based on the data provided by the Association of Housing Cooperatives in the Polish Republic (2009).

The data contained in Table 1 suggest that members of housing cooperatives who held occupancy rights to their apartments readily took advantage of the legal entitlements to acquire a strata title. Before the amended Act came into force (31 July 2007), there were 830 000 apartments to which tenants held occupancy rights (23.7% of the total number of housing cooperative apartments); after two years (31 August 2009), the number of such apartments fell to 227 000, which made up 6.5%. At the same time, 145 000 members of housing cooperatives filed written applications to transform their property rights and awaited decisions from boards of cooperatives (Tab. 2).

Table 2  
Number of applications for transformation of a legal title to an apartment being processed

| Transformation of a legal title to an apartment                                  | As of 31.08.2009 |        |
|--|------------------|--------|
|  | thousand         | %      |
| From occupancy right to ownership right to an apartment in a housing cooperative | 9.00             | 1.60   |
| From occupancy right to strata title   | 145.00           | 36.40  |
| From ownership right to an apartment in a housing cooperative to a strata title  | 170.00           | 61.30  |
| From lease to a strata title   | 4.00             | 0.70   |
| In total   | 328.00           | 100.00 |

Source: the author, based on the data provided by the Association of Housing Cooperatives in the Polish Republic (2009).

The process of transforming ownership rights to apartments in housing cooperatives to strata titles was less dynamic (Tab. 1), which may be due to the fact that both rights are similar in character. Both the ownership right and strata title are transferable rights, both are hereditaments and both may be subject to execution. Both rights can be mortgaged and possession of any of the right does not entail the holder to be a member of a given housing cooperative. However, all this does not change the fact that the ownership right to an apartment in a housing cooperative is a limited property right and the housing cooperative remains the owner of the given apartment. The number of apartments to which tenants had ownership rights decreased to 263 000 during the analyzed period, which meant a fall from 72.4% to 64.9% (Tab. 1). Another 170 000 applications for transformation of rights were being processed (Tab. 2).

Another legal title to occupy residential units in housing cooperatives, not governed by the regulations concerning housing cooperatives, is the lease of an apartment. This is an obligation right, of the “power” comparable to the occupancy right to an apartment in a housing cooperative. Most tenants who rent apartments from a cooperative are former residents in company apartments which have been incorporated to housing cooperatives under specific legal regulations. Some of the apartments cannot be granted the status of a strata property because their tenants have not participated in the construction costs. Others can take advantage of the amended Act, for example during the analyzed period, 3000 tenants acquired strata titles to their apartments (Tab. 1) while four thousand other tenants applied for such transformation (Tab. 2).

Recapitulating, creating favourable financial conditions for housing cooperative members and tenants stimulated a dynamic transformation of property rights to strata titles. On 31 August 2009, the number of apartments to which residents held a strata title was 956,000, which was equal to 27.3% of the total housing resources of cooperatives (Tab. 1). As estimated by the Association of Housing Cooperatives of the Polish Republic, at the end of 2010, the percentage of apartments with strata titles of ownership could reach 35%, the apartments with the ownership right made up 60% and the remaining percentage is divided into apartments with the occupancy right, leased or with an unregulated legal status.

## **Summary**

The process of transformation of property rights in housing cooperatives has caused considerable changes in the structure of cooperative tangible

assets. These are irrevocable changes, and there are many indications suggesting that the transformation process is slowly stabilizing. According to the estimates made by the Association of Housing Cooperatives in the Polish Republic, the share of apartments either with occupancy rights or leased left in the housing resources of cooperatives is about 5%. These are mainly apartments built with some co-financing from the public funds and therefore they cannot be transformed into a strata property. Another factor which proves the gradual stabilization of the process of transformation of property rights in housing cooperatives is a relatively poor interest on behalf of residents in transforming ownership rights to their apartments to strata titles. We are also witnessing the beginnings of a discussion on the management of real estate in housing cooperatives. With a much higher percentage of apartments to which residents hold strata titles, housing cooperatives are turning into managers of real estate owned by other persons. This will necessitate changes in the qualifications of persons employed to manage such properties. Until now, this problem has been neglected because most of the apartments were occupied by residents holding occupancy or ownership rights. In both cases, a housing cooperative remained the owner of a given estate and did not need licensed managers to run own property. Finally, let us not omit the question of new owners of strata titles being adequately prepared and well-informed to manage their own property. A housing cooperative in sound financial condition and with effective management strategies may encourage strata title owners to leave their apartments under the previous management.

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