



” Housing association - differences in the management of shared property

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On 1 January 1995, with the entry into force of the Act on Premises Ownership, the concept of a housing association was introduced, defined as an obligatory form of association of owners of premises in property - a new legal and property entity in Polish law. The Act was not the first piece of legislation to regulate the ownership of premises, earlier these issues were regulated by the Civil Code. The management of the common property was regulated much earlier, with the entry into force of the Decree of the President of the Republic of Poland of 24 October 1934 on ownership. The separation of independent premises in a multi-apartment building resulted in a common property and the need to manage it. Referring to Chapter I, Article 3 of the Premises Ownership Act - the common real estate is the land and those parts of the building, which are not part of the premises and do not serve exclusively for the use of the owners of the premises.

The fundamental differences between large and small housing association are the legal basis, on which they operate. Knowledge of these differences and of the fact that with the ownership of premises comes a share in the common property can be helpful when making decisions on purchase of a flat.

COMMON PROPERTY MANAGEMENT IN A LARGE HOUSING ASSOCIATION

Large housing association includes more than three premises. Being the owner of the premises, you and the rest of the owners can determine the manner of management of the common part in the agreement on the establishment of separate ownership of premises or later in a contract (in the form of a notarial deed). In case of a large community, the owners of the premises are obliged to adopt a resolution on the management board election. The most common forms of management are owner management, entrusted management or forced management. Only an individual can become a member of the management board - regardless of whether or not this person is a member of the housing association. The duties of the management board are set out in the Act on Premises Ownership - among other things, it is obliged to manage the affairs of the housing association and has a representative function.

One of the features that distinguish housing communities is the way, in which the management board takes actions. Basically, two types of actions can be distinguished: ordinary management actions, which are taken independently by the management board, and actions exceeding the scope of ordinary management, for which a resolution of the apartment owners giving a power of attorney to enter into contracts and consenting to its execution is necessary. In large housing associations, resolutions play a very important role. Resolutions of the owners are adopted at meetings of the housing association or during an individual collection of votes by the management board - a resolution is adopted after obtaining a majority of votes. Each of them may be challenged in court by the owner of the premises on such grounds as:

- non-compliance with legal provisions,
- infringement of the principles of proper functioning and management of the property,
- non-compliance with the agreement of the owners of premises,
- other infringement of the owner's interest.

The Law on Premises Ownership allows for the possibility of suspending or dismissing individual members or the entire management board - mainly to avoid situations, when the management board may expose the community to ineffective management, making decisions that are not in line with the majority of community members. The dismissal or suspension is carried out by means of the adoption of a resolution by the majority of the owners.



In large housing associations, the management board is also obliged to convene a meeting of the housing association at least once a year in the first quarter. According to Article 32 of the Apartment Ownership Act, the management board notifies each apartment owner in writing of the owners' meeting at least one week before the meeting. During the community meeting:

- the owners of the apartments should adopt a resolution on the annual business plan and possibly on the amount of the advances to be paid to cover costs;
- the management board should submit a report on its activities, and the owners of the apartments should assess these and adopt a resolution on the approval of the management board ;
- evaluation of the management board/property manager.

If a meeting is not convened by the management board or property manager within the specified time, the Act provides that the owners of the premises have the right to convene such a meeting themselves. Each owner may have a proxy and be represented by him or her at the meeting. When a resolution is passed, the management board is obliged to inform all owners of this fact.

COMMON PROPERTY MANAGEMENT IN A SMALL HOUSING ASSOCIATION

According to Article 19 of the Premises Ownership Act: *"If the number of separate premises and non-separated premises still belonging to the current owner is not greater than three, the regulations of the Civil Code and the Civil Procedure Code on joint ownership shall apply to the management of the common property accordingly."* This means that if the manner of management of the common part is not regulated, owners in small housing associations decide on the operation based on the above legal basis.

According to article 200 of the Civil Code, each co-owner has a duty to participate in the management of the common thing (so-called direct management). The difference between the types of housing associations is also noticeable at the level of management activities. For acts of ordinary management in a small housing association, the consent of the majority of the apartment owners is necessary, while for acts exceeding ordinary management the consent of all co-owners is needed. In case of lack of consent for ordinary management acts, each owner may ask the court to give authority to do so, while in case of lack of consent for acts exceeding ordinary management, owners who hold more than half of the shares may ask the court to make a decision, taking into account the interests of all co-owners.

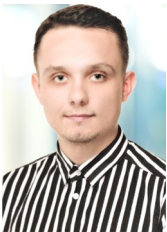
Premises' owners may also request a court decision if the majority of co-owners intend to take actions, which are contrary to the proper functioning of the housing association. It is also important to note that at the same time, the owners of the premises have the right to apply to the court for the appointment of a property manager, if the decision-making in the housing association is problematic or violates the rules of proper management and harms the minority. It is important to mention that in small housing associations there are no resolutions in operation - the owners make decisions by agreement. A characteristic feature of management in a small housing association is the equality of rights and obligations of all co-owners. This means making decisions collectively, but also implementing them together. The management board is not appointed. It is possible to entrust the management to an external entity - by means of the first agreement on the establishment of separate ownership of the premises, or later in a resolution of the owners recorded by a notary public. Due to the fact that housing associations of up to three premises base their operation on the Civil Code and the Code of Civil Procedure, their management is somewhat more complicated than that of large associations - the situation



when one of association members is absent may serve as an example. Then, for example, it is impossible to adopt a business plan. On the other hand, in small housing associations, the owners may have a stronger influence on decision-making.

SUMMARY

Small housing associations, unlike large ones, are not obliged to appoint a management board, although if the owners have reached an agreement, then nothing prevents them from appointing one. Small housing associations operate on the basis of the Civil Code and the Code of Civil Procedure, whereas large ones are based on the Apartment Ownership Act. Actions exceeding the scope of ordinary management may be performed with the consent of all owners, in case of large housing associations - their majority in the form of resolutions. Ordinary management actions require the consent of the majority of owners, while in large housing associations the management board takes them independently. In housing associations with more than three premises, the removal or suspension of the management board can be requested at any time by a resolution of the owners. Cases in small housing associations that are disputed and no agreement can be reached, may be settled in court.



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