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Legal Flash

Changes in Polish regulations in real estate

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LAW ENACTED

01 CHANGES IN THE CONSTRUCTION LAW

PARTIAL DIGITIZATION

Digitization of the formalities concerning the construction process is progressing. At the beginning of **August 2022,** part of the provisions of the Act of July 7, 2022, amending the Construction Law and certain other Acts (Journal of Laws, item 1557) came into force.

Under this legislation, issues related to the e-Construction portal (https://e-budownictwo.gunb.gov.pl/) have been regulated, including its functionality, registration, and accessing the portal. Within the e-Construction portal, the following documents, among others, can be generated and submitted electronically through the portal:

- building permit application,
- notification of construction or performance of other construction works,
- application to amend the building permit,
- notice of completion of construction,
- application for an occupancy permit.

It should be noted that applications generated on the e-Construction portal can also be printed and submitted traditionally – in paper form.

The Act also introduced Central Register of Persons Holding Construction Qualifications (e-CRPHCQ). The Chief Inspector of Construction Supervision maintains in the e-CRPHCQ central registers of persons holding construction qualifications and those punished for professional liability in construction. Accordingly, the requirement to attach a copy of the decision on granting the designer construction qualifications in the relevant specialty and a certificate of enrollment in the list of members of the relevant chamber of professional self-government authority to the land development project, architectural and construction project and technical design does not apply to qualifications and persons listed in the e-CRPHCQ. The register is available at: https://e-crub.gunb.gov.pl/#search.

In addition, a provision has been introduced stipulating that a building permit for a building facility no longer needs to include electricity, water, sewage, gas, heat, and telecommunications connections, which are required for such a facility.

The remaining provisions of the Act of July 7, 2022, on Amendments to the Construction Law and Certain Other Laws will come into force on **January 1, 2023** and **January 27, 2023,** respectively. As part of these amendments, new regulations on the construction logbook will be implemented, including the possibility to keep the construction logbook in electronic form in the Electronic Construction Logbook (ECL) system. It will still be possible to keep a construction logbook in paper form. However, construction logbooks in paper form will be issued only **until December 31, 2029**. Keeping the construction logbook exclusively in electronic form will aim to curb significant abuses of construction logbook entries occurring in practice. Moreover, as part of the digitization, the building structure book will also be established and maintained in electronic form in the digital building structure book system.

The above-mentioned changes, increasing the level of digitization of the construction process, should improve the circulation of documentation between the investor and the administrative authorities, thus reducing administrative proceedings' duration. Consequently, this will accelerate the time of investment implementation.

CONSTRUCTION OF SINGLE-FAMILY HOUSES UP TO 70 M²

As of January 3, 2022, as a result of the entry into force of the Act of September 17, 2021, amending the Construction Law and the Act on Planning and Spatial Development (Journal of Laws, item 1986), the construction of free-standing, not more than two-story single-family residential buildings with a construction area of up to 70 m^2, the impact area of which is entirely within the plot or plots on which they are designed, as long as the construction is carried out to meet the investor's own housing needs, requires only a notification and simplified rules of procedure apply to them, i.e., among others:

- construction can begin after the notification has been delivered to the architecture and construction administration authority,
- the architecture and construction administration authority may not object to the construction notification,
- there is no obligation to appoint a construction site manager – however, the investor is required to attach to the application a statement that he

accepts the responsibility for managing the construction if a construction site manager is not appointed,

- there is no obligation to keep a construction logbook – if a construction site manager has not been appointed, a construction logbook is not attached to the notice of completion of construction. However, the investor must attach to such a notice a statement that the usable area of the building and each residential units have been measured, in a manner consistent with the provisions of the ordinance on the detailed scope and form of the construction project, and that the construction of the building is in accordance with the construction project and regulations,
- the notification must be accompanied by the investor's statement that the planned construction is carried out to meet his own housing needs, made under penalty of criminal liability for making a false statement under Article 233 § 6 of the Act of June 6, 1997. - Criminal Code (Journal of Laws of 2020, item 1444 and 1517, and of 2021, item 1023); the person making the statement is required to include the following clause: "I am aware of the criminal liability for making a false statement", this clause replaces the authority's instruction on criminal liability for making false statements.

02 NEW REAL ESTATE DEVELOPER ACT

Another major legal change in the Polish real estate market was the entry into force on **July 1, 2022**, the Act of May 20, 2021, on the protection of the rights of the buyer of a residential unit or single-family house and the Developer's Guarantee Fund (Journal of Laws, item 1177) (the so-called "New Real Estate Developer Act"). The new regulations apply not only to the transfer of ownership of residential units but also to the transfer of ownership of commercial units sold together with a residential unit within the same development project or investment task, as well as real estate built up with single-family houses. In addition, the Act regulates the transfer of ownership of already existing units.

Importantly, certain provisions of the Act will also apply to sales contracts concluded between a buyer and an entrepreneur other than a developer, if

the subject of the contract was created as a result of a development project or investment, and the transfer of rights from such contract to the buyer occurs for the first time.

According to the New Real Estate Developer Act, a developer who begins sales is required to conclude either an open or closed residential trust account agreement. If there are separate investment tasks within a development project, the residential trust account agreements should be concluded separately for each task. Previously, the developer was required to provide buyers with one of four kinds of protection: (i) a closed residential trust account, (ii) an open residential trust account and an insurance guarantee (iii) an open residential trust account and a bank guarantee, or (iv) an open residential trust account. Since the recalled guarantees were not used in practice, to the detriment of securing the buyer's funds for the development, it was decided to remove them from the New Real Estate Developer Act. Under the new legislation, the developer is required to make timely contributions to the Developer Guarantee Fund according to the chosen type of protection. The Developer Guarantee Fund is intended to provide better protection for buyers against the partial or total loss of funds they have paid into the development. The funds are used to reimburse buyers' payments made to an open housing trust account. What's more, the Fund is also intended to protect the buyer from the bankruptcy of the bank that maintains the trust accounts. In addition to protecting the buyer’s payments, the Act also sets out the rules for the withdrawal of funds from the residential trust account and the developer's obligations before the conclusion of an agreement aimed at transferring ownership of a residential unit or a single-family house.

The New Real Estate Developer Act introduces the rules and procedure for concluding, as well as the content of the reservation agreement (which is often used in practice) concluded between a developer and a person interested in purchasing real property. Before these regulations came into force, reservation agreements functioned without specific statutory regulation as so-called unnamed contracts.

Under the new regulations before concluding a reservation agreement, the developer will have to deliver to the person interested in concluding the agreement an information prospectus with attachments (containing some detailed information about the investment). It should be emphasized that the developer will not be able to freely determine the amount of the reservation fee, since under the new regulations the amount of the reservation fee cannot exceed 1% of the price of the residential unit or single-family house specified in the information prospectus. In addition, cases, when the reservation fee is to be returned to the reserving party, have been

explicitly indicated. The reservation agreement must be concluded in writing under pain of being declared null and void and specify in particular:

- parties, place, and date of the agreement;
- the price of the residential unit or single-family house selected by the reserving party from the sales offer;
- the amount of the reservation fee, if such a fee was agreed upon by the parties;
- the period for which the residential unit or single-family house selected by the reserving party will be excluded from the offer for sale;
- the location of the unit in the building;
- the usable area of the unit, the area, and the layout of the rooms.

The New Real Estate Developer Act modifies the provisions concerning the rules and procedures for concluding the developer agreement and other agreements between the buyer and the developer. The Act also expands the catalog of situations in which the buyer has the right to withdraw from the developer agreement. Withdrawal will be possible, for example, in the event of the developer's failure to correct a material defect in the residential unit or single-family house under the terms of the Act. If the buyer exercises his right to withdraw from the contract, it will not be permissible to stipulate that the withdrawal by the buyer may take place if the buyer pays a specified sum.

The New Real Estate Developer Act also introduced regulations on the rules and procedures for the delivery of residential units/single-family houses, as well as the rules for the liability of the buyer and the developer with respect to such delivery procedure.

The Act also specifies the rules of operation of the Developer Guarantee Fund (effective as early as July 2021), from which buyers will be reimbursed for funds paid in the event of the developer's bankruptcy, and to which developers must make contributions. The Developer Guarantee Fund is a new institution that places a significant burden on developers. This is because the contribution is calculated as a product of the percentage rate set by the ordinance of the Minister of Development and Technology and the value of the payment made by the buyer to the residential trust account or the value of the reservation fee transferred to the residential trust account by the developer after the conclusion of the developer agreement. Currently, the percentage rate according to which the amount of the contribution due to the Developer Guarantee Fund is calculated amounts to:

- 0.45% - if there is an open residential trust account,
- 0.1% - if there is a closed residential trust account.

At the same time, the New Real Estate Developer Act specifies that the maximum percentage rate at which the contribution to the Fund is calculated cannot exceed:

- 1% - if there is an open residential trust account or
- 0.1% - if there is a closed residential trust account.

03 GUARANTEED HOUSING LOAN

On **May 26, 2022,** the Guaranteed Housing Loan Act of October 1, 2021 (Journal of Laws, item 2133) came into force. Guaranteed Housing Loan (GHL) is a new instrument on the Polish market, which can be granted for a period of at least 15 years, without the requirement for a minimum down payment contribution from the borrower to cover all or part of the expenses:

- incurred in connection with the construction of a single-family house and the transfer of ownership of land for the purpose of building a house on it,
- incurred in connection with the transfer of ownership of a residential unit or a single-family house, including finishing works, or
- constituting the construction contribution.

Under the GHL, a part of the housing loan - not less than 10% and not more than 20% of the expenses for which the loan is taken - is covered by a guarantee provided by Bank Gospodarstwa Krajowego (a Polish national development bank with headquarters in Warsaw). The loan is provided by banks that have concluded or will conclude relevant agreements with Bank Gospodarstwa Krajowego. Currently, the GHL is offered by Alior Bank and Santander Bank Poland, and starting from September 1, 2022, also by PKO BP.

It should be noted that one of the conditions for granting GHL is that the borrower and the members of his household must not own or have a cooperative right to another residential unit or single-family house. The above condition is also considered to be met if the household includes at

least two children and the usable area of such residential unit/single-family house does not exceed the area limits indicated in the Act.

The Guaranteed Housing Loan Act also provides the possibility for the Bank Gospodarstwa Krajowego to make a so-called family repayment. The family repayment is made during the term of the guaranteed housing loan if the criteria indicated in the Act are met and the borrower's household has grown:

- by a second child - repayment in the amount of PLN 20,000,
- by a third or subsequent child - repayment of PLN 60,000,

The repayment amount cannot exceed the outstanding capital part of the guaranteed loan.

The Guaranteed Housing Loan is granted in Polish currency to eliminate exchange rate risks. The Act also regulates the maximum price per m^2 of the usable floor area of an apartment purchased with the loan funds. The loan can be granted until December 31, 2030.

At the moment it is difficult to assess the impact of the Guaranteed Housing Loan Act coming into effect. The limited number of properties that can be purchased under the loan, which is limited by a price cap, and the general situation in the market, including successive increases in interest rates, certainly translate into less interest in the Guaranteed Housing Loan.

LEGISLATION UNDERWAY

04 PLANNED LANDMARK CHANGES IN THE CONSTRUCTION LAW

In August 2022, the list of legislative and programmatic works of the Council of Ministers included a bill to amend the Construction Law and certain other Acts (in the list of works under the number UD427), which is intended to further simplify and speed up the construction process. The new text of this legislative bill was published on October 3 this year.

In particular, the project is based on the following solutions:

- **The full digitization of the construction process**, including:
    - introduction of a general rule that applications and notifications mentioned in the Construction Law shall be submitted only in the form of an electronic document with a qualified electronic signature, trusted signature, or personal signature. Attachments to applications and notifications, including permits, agreements, and opinions, shall be attached in the form of an electronic document, a copy of an electronic document, or a digital representation of a document in paper form ensuring its legibility, in particular a photograph or a scan. A power of attorney, a construction project, and a statement on the right to dispose of real estate for construction purposes shall be attached only in the form of an electronic document,
    - notification of construction or performance of other construction works, submission of an application for a building permit, a temporary building permit, a demolition permit or notification of demolition, submission of an application for an amendment to a building permit or notification of the construction supervision authority of the intended date of commencement of construction works will be possible only via an electronic document, submitted on the application form through the e-Construction portal (currently it is also possible to do it in paper form and in the form of an electronic document via the e-Construction portal),

- the possibility of submitting in the paper form an application for authorization to grant a departure from technical and construction regulations will no longer be available – this will be submitted only in the form of an electronic document via an electronic address made available in the Public Information Bulletin of the minister in charge,
- instead of a plot or land development project and an architectural and construction project, the investor will be able to attach to the application for a building permit information containing individual project numbers, if they have been posted in the Construction Project Database,
- instead of a plot or land development project, the developer will be able to attach to the notification of construction or performing other construction works information containing the individual number of the plot or land development project, if it has been posted in the Construction Project Database,
- the construction project, including the project for the development of the plot or land, the architectural-construction project, and the technical project, shall be prepared only in electronic form,

- introduction of the controversial Article 10b to the Construction Law, which raises significant doubts as to its compliance with the Polish Constitution, stating that when a party in a proceeding files an appeal or a complaint against a decision issued under the law, the appeal or complaint shall be accompanied by a statement that the party is aware of criminal liability for intentionally misleading the authorities about facts or circumstances relevant to the case, made under penalty of criminal liability for making a false statement under Article 233 § 6 of the Criminal Code,
- extension of the catalog of investments requiring only a notification of construction or performance of other construction works (and therefore not requiring a building permit) and the catalog of investments requiring neither a building permit nor a notification, e.g.:

  - construction works involving the reconstruction of the external partitions and structural elements of buildings involving the construction, enlargement, or reduction of windows or doors, as long as it does not lead to an increase in the area of impact of the object beyond the plot on which the building is located will not require a building permit, but will require a notification,
  - construction works involving the installation of technical devices together with masts, used to generate electricity from wind energy for own consumption or for introduction to the grid, with a capacity no greater than the capacity of a micro-installation within the meaning of Article 2 point 19 of the Act on Renewable Energy Sources of February 20, 2015, and with a total height of more than 3

m and no more than 12 m, on a building structure will not require a building permit, but will require a notification; the installation of such devices together with masts with a total height of no more than 3 m will not even require a notification,

- alteration works concerning the thermal insulation of buildings higher than 25 meters will not require a building permit, but will require a notification,
- construction of kiosks and street vending pavilions with an area of no more than 15 sqm will only require a notification,
- construction of outlets to natural watercourses and the construction of unlined tanks for rainwater or snowmelt with a capacity of more than 5 m^3 and no more than 15 m^3 will require only a notification, and the construction of such tanks up to 5 m^3 will not even require a notification,
- construction of flagpoles from 3 m to 7 m high sited on the ground requires only a notification, and the construction of such flagpoles up to 3 m high sited on the ground will not even require a notification,

- creation of a Construction Project Database for collecting construction projects, including land or plot development projects, architectural and construction projects, and technical designs, drawn up in electronic form, as well as the creation of a System for Handling Administrative Proceedings in Construction, ensuring the conduct of administrative proceedings in the investment and construction process,
- simplification of the procedure for commissioning building structures, by stipulating that the use of a single-family residential building or a building structure classified as category III and built based on a building permit decision can start at the time the construction site manager submits a statement on the completion of construction and the possibility of using the building structure (the statement can be submitted only after certain conditions are met),
- extending significantly the expiration of the limitation period for judgments in the construction liability cases,
- building appraiser will again become an independent technical function in construction; the preparation of building structure technical expertise, in particular: technical opinions, technical assessments, technical judgments, and technical expertise will also be recognized as an independent technical function in construction,
- extension of the scope of construction authorization in the architectural specialty in a limited scope by the possibility to authorize design or direct construction works with respect to the architecture of a building with a volume of up to 1,000 m^3 (previously it was only up to 1,000 m^3 of homestead buildings or in the homestead buildings area),

- investor will no longer be able to request a separate decision on approval of a plot or land development project or architectural and construction project preceding the issuance of a building permit,
- the draft confirms explicitly the rule previously established by jurisprudence that the partial transfer of a building permit can only take place on the condition that both the transferred part of the decision and the part of the decision that is not to be transferred include construction facilities or complexes of construction facilities with associated construction equipment that can function independently as intended,
- significant reduction of the time limits for issuing a building permit, after the expiration of which a higher authority will impose on the relevant architecture and construction administration authority a penalty of PLN 500 for each day of delay: the periods were shortened from the current 65 days from the date of applying such a decision to 21 days - if the investor is the only party to the proceedings, or to 45 days - if the investor is not the only party to the proceedings,
- introduction of the provision that the architecture and construction administration authority does not check the compliance of the project for the development of a plot or land with technical and construction regulations,
- introduction to the Construction Law a definition of a backyard shelter and a backyard hiding place, as well as a statutory delegation for the minister responsible for construction, planning and spatial development, and housing to specify, by regulation, the technical conditions to be met by backyard shelters and hiding places with an area of up to 35 m2 and their location, whereby the construction of this type of construction facilities will not require a building permit, but only a notification.

The draft includes solutions aimed at extending the application of the regulations on the construction of free-standing, no more than two-story single-family residential buildings up to 70m^2, the impact area of which is entirely within the plot or plots on which they are designed, and the construction is carried out to meet the investor's own housing needs, also to the construction of such buildings with a building area exceeding 70m^2, as well as to the reconstruction of such buildings. At the same time, the exclusion of the possibility of filing an objection by the architecture and construction administration authority applies only if the investor has attached the documentation required for the notification of construction or reconstruction of such buildings, and the architecture and construction administration authority, based on the submitted documentation, has determined that the object planned for implementation meets all the conditions for such an object. In addition, for the aforementioned buildings with a floor area of more than 70 m2, there will be a requirement for the investor to appoint a construction site manager.

05 WORK ON AMENDING THE ACT ON PLANNING AND SPATIAL DEVELOPMENT

A draft on amending the Act on Planning and Spatial Development and certain other acts (UD369) is currently at the “opinion” stage within the government legislative process. In the meantime, a new version of the draft on Amendments to the Act on Planning and Spatial Development and Certain Other Acts has been published on the pages of the Government Legislation Center, which is included as part of this publication. The draft - in its new form - was sent for inter-ministerial consultations, which were to last until September 23, 2022.

General plan of the municipality:

Pursuant to the proposed amendment, the municipal council will be required to adopt a general plan for the municipal area, within which planning zones and municipal urban standards will be determined. The range of zones allowing residential development will be determined by the result of the methodologically clarified demand for new residential development. In addition, in the general plan, municipalities will be able to specify areas of housing supplementation and areas of inner-city housing. Importantly, the general plan will only indicate a catalog of possible designations of land use - without specifying a particular use. The general plan will be (unlike the study of conditions and directions for the spatial development of the municipality) an act of local law.

The findings of the general plan with regard to planning zones, municipal urban standards, and inner-city housing areas will be taken into account in the preparation of the local spatial development plan ("LSDP" or “zoning plan”) and will form the legal basis for the zoning decision.

Elimination of binding studies of land use conditions and directions:

Closely related to the above amendment, the bill also provides for the elimination of the provisions authorizing the issuance of studies of conditions and directions for the spatial development of the municipality. Studies of municipal land use conditions and directions are to remain in force until the date of entry into force of the municipality's general plan in a given municipality, but no later than December 31, 2025. If municipalities fail

to enact general plans by the above deadline, a situation may arise in which obtaining zoning decisions and enacting new LSDP by municipalities will effectively become impossible.

Zoning decision issued based on the municipality's general plan:

The amendment changes significantly the provisions on zoning decisions. First of all, the provisions of the general plan will be binding on the zoning decision.

The amendment introduces the institution of the so-called housing supplementation area, which is one of the optional elements of the municipality's general plan. From an investment point of view, the issuance of a zoning decision will be possible only if the municipality designates such an area in the municipality's general plan and only in that area. In addition, the requirement will have to be met that the zoning decision conforms to all the parameters and urban planning standards set forth in the municipality's general plan.

The previous version of the bill (dated April 2022) was also introducing a time limit on the validity of zoning decisions. The zoning decision was to expire after 5 years from the date on which it became final. Introducing the abovementioned expiration date together with the plans to eliminate studies of land use conditions and directions necessary for the creation of development plans by December 31, 2025, the level of coverage of Poland's territory with local plans, and - despite the desired proposal to simplify planning procedures – a long period of general enactment of municipalities' general plans, would undoubtedly lead to investment paralysis in most of the country. The current version of the bill has completely ignored the aforementioned issue. This means that zoning decisions will not be limited by an expiration date, and investors will be able to make unlimited use of the zoning decisions issued to date.

Inner-city housing area:

According to the new version of the draft, dated August 2022, the inner-city housing areas specified in the existing studies of land use conditions and directions, as well as in the existing local spatial development plans, will continue to be inner-city housing areas within the meaning of the Act until the date of entry into force of the municipality's general plan in that municipality. This is a significant improvement over the original version of the draft (dated April 2022), which stipulated that upon the expiration of the studies of land use conditions and directions, the provisions defining the inner-city housing areas would cease to apply (no later than December 31, 2025). In the case of uncompleted proceedings for issuance of a building

permit decision, proceeded based on zoning decisions, the above regulation could have far-reaching negative consequences for investors, resulting in i.e. the need to completely redesign the investment - even at the stage of its implementation, when the building permit decision is overturned by the administrative court. This is because downtown development offers the possibility of reducing the distance by 50% in the case of obscuring and shading buildings.

Planning fee - abandonment of controversial amendment proposal:

According to an earlier version of the draft dated April 2022 a significant change was envisaged for the planning fee.

Currently, the provisions of the Act on Spatial Planning and Development indicate that a planning fee of up to 30% of the increase in the value of the real estate is charged if, in connection with the enactment of an LSDP or its amendment, the value of the real estate has increased and the owner or perpetual usufructuary sells the real estate. Under the amendment (in its previous wording), a fee in the amount of 30% of the increase in the value of the real estate was to be charged if, in connection with the enactment of an LSDP or its amendment, the value of the real estate increased. The charge of the planning fee was therefore not to be contingent on the disposal of the property. The fee was foreseen as the municipality's own income. The current version of the bill in question has completely ignored the aforementioned issue, therefore the wording of the provisions on the planning fee will remain unchanged.

Reduction of the boundaries of the analysis area:

The bill also provides for changes in rules concerning the area of analysis in procedures regarding issuing a zoning decision. Under the current provisions, such analysis area is determined as a distance not less than three times the width of the front of a plot, but not less than 50 m. The proposed amendment introduces a rule, according to which the analysis area will be determined as a distance equal to three times the width of the front of a plot, but not less than 50 m and not more than 200 m.

IIP:

The proposed amendments also included a proposal to introduce a new, special form of local plan - the Integrated Investment Plan (IIP), which the municipal council will be able to adopt at the request of an investor. The IIP is intended to replace resolutions on the location of residential development as a new tool intended for the implementation of major investments. The integrated investment plan will cover the area of the main

investment and the area of the complementary investment. The entry into force of the IIP will result in the expiration of the validity of the LSDP or parts thereof relating to the area covered by this IIP. The procedure for drawing up the integrated investment plan involves negotiations conducted with the investor regarding the content of the draft of the urban planning agreement and the draft of the integrated investment plan, as well as agreement and opinion on the draft of IIP and public consultations. The draft of the integrated investment plan will be attached to the urban planning agreement concluded in the form of a notarial deed between the investor(s) and the municipality. The legal effects of the urban planning agreement will arise as of the date of entry into force of the integrated investment plan as specified in the annex to the agreement. The introduction of the IIP is intended to expand the catalog of large investments requiring coordination into the necessary technical, communications, or social infrastructure - the IIP will be able to include not only residential investments but also service or production investments.

Urban Register and unification and simplification of planning procedures:

The draft of amendment to the Act on Spatial Planning and Development envisages the introduction of an Urban Register containing, among other things, documents generated during the preparation of planning acts, reports on public consultations, administrative decisions related to spatial planning, and decisions of supervisory bodies. There will also be an amendment to the provisions on public participation in the planning procedure by unifying the provisions on planning acts and aligning them with the provisions on public consultations contained in other acts, as well as with the possibility of using remote communication tools when conducting consultations. The proposed amendments intend to shorten planning procedures.

06 PROJECT TO INCREASE NOTARIES' POWERS OVER LAND AND MORTGAGE REGISTER

As part of the government's legislative process, a bill amending the Law on the Notarial Profession Act and certain other Acts is in its final stage, just before being sent to the Parliament (UD383).

The draft provides for an amendment to the Code of Civil Procedure, thanks to which notaries will gain the ability to perform actions in the land and mortgage register proceedings. A notary drawing up a notarial deed concerning separate ownership of premises and limited rights in rem related to it will also make an entry of this right in the Land and Mortgage Register. The entry in the land and mortgage register signed by the notary will be considered made as soon as it is recorded in the central land and mortgage register database.

The powers of notaries under the Law on the Notarial Profession Act of February 14, 1991 (i.e., Journal of Laws of 2022, item 1799) are to be increased by:

- processing applications for entry in the Land and Mortgage Register regarding the establishment and encumbrance of separate ownership of premises with limited rights in rem and other claims relating to the premises,
- processing applications for entry in the Land and Mortgage Register concerning the joining and separation of real estate or parts thereof, related to the establishment of separate ownership of premises,
- disclosure in the land registers of limited rights in rem, restrictions on disposal, and other rights and claims.

A notary who has been running a notary office for 3 years will be able to apply for a certificate of authorization from the Minister of Justice to make entries in Land and Mortgage Register if no final disciplinary ruling has been issued against him.

Pursuant to the proposed amendments, notaries will be able to perform land and mortgage bookkeeping activities in the cases specified in the Land and Mortgage Register Act. The activities that notaries and employees of notary offices may perform on their own in keeping and storing Land and Mortgage Register - taking into account the principles of efficiency,

rationality, and promptness of the court and the principle of openness of Land and Mortgage Register - will be specified in an ordinance of the Minister of Justice.

The proposed solutions are aimed at improving the efficiency of the real estate trading by easing the burden on courts and shortening the time for actions in Land and Mortgage Register proceedings. Since the draft is only at the stage of the government legislative process, it is impossible to determine whether and to what extent it will come into force in the future. The planned date for the adoption of the draft by the Council of Ministers is the fourth quarter of 2022.

07 FACILITATION IN THE PROCEDURE OF CONVERSION OF AN OFFICE OR COMMERCIAL BUILDING TO A RESIDENTIAL BUILDING

Do A bill on changing the use of certain non-residential buildings to residential buildings (UD401) has been referred to the Law Commission, as part of the government legislative process.

The draft stipulates that the alteration of the external partitions of an office building or trade building, or parts thereof, which are not structural elements, carried out in connection with the change of use of such a building or part thereof to a residential building, will not require a building permit or notification. However, the above regulation will not apply to buildings and areas covered by monument protection referred to in Article 7 of the Act of July 23, 2003, on Monument Protection and Monument Care (i.e., Journal of Laws of 2022, item 840) or included in the municipal register of monuments.

The change of use of office buildings to residential use, as well as the location of housing projects on land left over from unused office buildings and large-scale retail facilities, is also to be made easier by the introduction of new solutions to the Act of July 5, 2018, on Facilitation of Preparation and Implementation of Housing Investments and Associated Investments (i.e. Journal of Laws of 2021, item 1538) The amendment to the Act is expected to include the following changes:

- at present, residential or associated investments may be carried out regardless of the existence or arrangements of the local zoning plan, provided that they do not contradict the study of conditions and directions for the spatial development of the municipality. This condition does not apply to areas used in the past as railroad, military, production, or postal service areas, where currently these functions are not carried out. The catalog of areas that are not affected by the condition of non-inconsistency with the study is to be expanded to include areas on which commercial facilities with a sales area of more than 2,000 m^2 are or may be located, as well as areas on which office buildings are located,
- after the development of housing units, single-family residential buildings, or other usable residential space based on a resolution on the location of a residential development project that includes land on which commercial facilities with a sales area of more than 2,000 m^2 are or may be located, and land on which office buildings are located, the developer will be able to sell, rent, lease and make available for gratuitous use of the above-mentioned real estate, under the condition that the investor presents the municipality with an offer to purchase residential units or single-family residential buildings with a total area of not less than 5% of the total usable area of all residential units, single-family residential buildings or other usable residential areas to be disposed of, leased, rented or made available for use, developed based on this resolution,
- obligation to notify the commune head, mayor or town president the change of use of a building in accordance with the procedure provided for in the proposed Act.

The Act is to expected to be in effect for only two years from the date of its entry into force, but this deadline that does not apply to changes made in the Act of July 5, 2018 on Facilitation of Preparation and Implementation of Housing Investments and Associated Investments.

The planned date for the adoption of the project by the Council of Ministers is the third quarter of 2022.

08 ACT ON AMENDMENTS TO THE ACT ON ENERGY PERFORMANCE OF BUILDINGS AND THE CONSTRUCTION LAW

Dnia 07 On October 07, 2022, the Sejm (the second chamber of the Polish parliament), after consideration of the Senate's amendments, passed the Act on Amending the Act on the Energy Performance of Buildings and the Construction Law (UC82). The Act is currently awaiting the President's signature.

The purpose of the changes is primarily:

i) implementation of Directive 2010/31/EU of the European Parliament and of the Council of May 19, 2010, on the energy performance of buildings; and
ii) the need to improve effectiveness of the current system for assessing the energy efficiency of buildings in Poland.

The Act introduces amendments correcting existing mechanisms in the area of preparing and submitting energy performance certificates and inspection protocols for heating or air-conditioning systems. The provisions aim to ensure the proper functioning of the requirements under Directive 2010/31/EU on the energy performance of buildings. The further development and improvement of the system for assessing the energy efficiency of buildings, by using the information on the energy performance of buildings, the efficiency of use of energy, and energy carriers contained in energy performance certificates and inspection protocols for heating systems or air-conditioning systems is part of the implementation of activities aimed at improving air quality in Poland. The amendments are also intended to allow public access to the basic information contained in energy performance certificates collected in the central register of the energy performance of buildings.

This Act also implements changes in the requirements for the inspection of heating and air-conditioning systems, expanding the scope of the mandatory inspection to include systems with a capacity of more than 70 kW. At the same time, it contains provisions that aim to curb the market operation, of documents that are not certificates within the meaning of provisions of the Act on Energy Performance of Buildings, i.e., documents prepared without the use of a central register of energy performance.

In addition, the Act normalizes, among other things:

- obligation to install automation and control systems in non-residential buildings, if technically justified and economically viable;
- as a general rule, the obligation to prepare energy performance certificates for newly constructed buildings as soon as they are put into use;
- a mechanism to ensure the transfer of energy performance certificates in connection with the sale or lease of buildings or parts of buildings;
- making regular inspections of heating or air-conditioning systems conditional on making changes that affect their energy efficiency;
- the ability to create also in electronic form the energy performance certificates for buildings or parts of buildings and inspection protocols for heating or air conditioning systems.

The expected effective date of the Act is six months from the date of its promulgation.

09 OTHER PLANNED CHANGES

DRAFT OF THE ACT ON AMENDMENTS TO ACT ON COLLECTIVE WATER SUPPLY AND COLLECTIVE SEWAGE DISPOSAL AND CERTAIN OTHER ACTS

A draft of the Act amending the Act on Collective Water Supply and Collective Sewage Disposal and Certain Other Acts (UC130) is at the "opinion" stage.

In particular, the project aims to transpose Directive (EU) 2020/2184 of the European Parliament and of the Council of December 16, 2020, on the quality of water intended for human consumption, which entered into force on January 12, 2021. The deadline for the transposition of the aforementioned directive is January 12, 2023.

Some of the main assumptions of the project are primarily:

- requiring property owners or managers to conduct risk assessments of internal water supply systems, regulating the procedures for acquiring the authority to perform these assessments;
- determining the competence of the authorities to issue assessments or approvals for the use of materials or products for the distribution or treatment of water. Determining the rules for authorizing the use of construction materials and products in contact with water intended for human consumption, taking into account the mechanism of the European positive list, and materials and products used for water treatment;
- formulation of water suppliers' obligations covering the testing of water quality for human consumption as part of internal water quality control;
- specification of the State Sanitary Inspection authorities competence, as well as the supervision procedures of the quality of water intended for human consumption, which will include monitoring of water quality, assessment of the suitability of water for human consumption, area assessment of water quality, and the processing of requests for approval of derogations from meeting water quality requirements.

DRAFT REULATION OF THE MINISTER OF DEVELOPMENT AND TECHNOLOGY ON THE CONSTRUCTION LOGBOOK AND THE ELECTRONIC CONSTRUCTION LOGBOOK SYSTEM

At the “opinion” stage is a draft Regulation of the Minister of Development and Technology on the construction logbook and the Electronic Construction Logbook System (61).

The fundamental reason why the above-mentioned project was created is the need to implement the next stages of digitization of the investment and construction process. Digitization of the construction process is a major convenience for engineers, architects and investors. The possibility of electronic submission of documentation necessary for the construction process will certainly speed up and streamline the entire procedure, as well as save the time of citizens and investors. Reducing the paper form of construction documentation also means simplifying the work of architecture and construction administration authorities.

The proposed regulation supplements the extensive regulations on the construction logbook currently found in the Construction Law. The new regulations are to take effect on January 27, 2023.

The proposed regulation specifies, in particular:

- all the elements that the construction logbook should consist of;
- the detailed method of issuing and maintaining the construction logbook in both paper and electronic form, including making entries (what the entries in the construction logbook should look like, especially those of key importance);
- paper construction logbook format;
- detailed method of authentication and authorization and the impact of this process on the maintenance of the construction logbook in electronic form;
- actions regarding the issuance of a construction logbook to be taken by the architecture and construction administration and construction supervision authority.

DRAFT REGULATION OF THE MINISTER OF DEVELOPMENT AND TECHNOLOGY ON THE BUILDING STRUCTURE BOOK AND THE SYSTEM OF THE DIGITAL BUILDING STRUCTURE BOOK

At the "opinion" stage is a draft Regulation of the Minister of Development and Technology on the building structure book and the digital building structure book (59).

The draft was created to implement the next stages of digitization of the investment and construction process. It supplements the extensive regulations on the building structure book currently found in the Construction Law. The new regulations are expected to take effect on January 1, 2023.

The proposed regulation specifies, in particular:

- all the elements that the building structure book should consist of;
- the format of maintaining the building structure book in paper form;
- the detailed method of maintaining the building structure book in paper and electronic form, including making entries;
- the detailed method of authentication and authorization and the impact of this process on the maintenance of a digital building structure book.

JURISPRUDENCE

10 EXPIRATION OF THE POSSIBILITY OF ANNULLING A BUILDING PERMIT

Currently, it is not possible to declare a building permit invalid if 5 years have passed from the date of its delivery or announcement. This is due to a regulation in the Construction Law, which came into force relatively recently, on September 19, 2020, under the Act of February 13, 2020, amending the Construction Law and certain other acts (the "Amending Act").

As part of the transitional provisions contained in the Amending Act, it is specified that to matters regulated in the Construction Law, initiated and not completed before the date of entry into force of the Amending Act, the provisions of the Construction Law from before the entry into force of the Amending Act shall be applicable.

In practice, the question has arisen as to whether, in light of the above, the new regulation regarding the limitation of the possibility of annulling a building permit period will apply if proceedings to annul such a decision were initiated before September 19, 2020. In a judgment dated **January 12, 2022, concerning the case of the castle in Stobnica**, the Voivodeship Administrative Court in Warsaw ruled on this issue (ref. VII SA/Wa 2074/21, LEX no. 3335977).

The justification for the said judgment indicates that the 5-year limitation of the possibility of annulling a building permit period will apply to building permits issued before the entry into force of the Amending Act, regardless of whether proceedings to annul such a decision were initiated before September 19, 2020, except in cases where the invalidity of the decision was finally established before that date.

The court noted that before September 19, 2020, the issue of the invalidity of the building permit was not regulated at all in the Construction Law. At the same time, according to the court, the scope of the cited transitional provision explicitly referred to proceedings initiated solely under the Construction Law. Given this, the provision cannot be understood as also referring to proceedings for annulment, which were and are regulated by the Code of Administrative Procedure. Nevertheless, the issue resolved in

the ruling cited above is debatable and at the same time fundamental for many entities. The indicated judgment of the Voivodeship Administrative Court in Warsaw is not final, so the judgment of the Supreme Administrative Court, for which we will have to wait several years, will be decisive in this matter.

Legal status as of October 07, 2022.

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