Polska Izba Nieruchomości Komercyjnych

An Overview of Legal Developments Relevant to the Real Estate Industry

LEGAL FLASH / JUNE 2025

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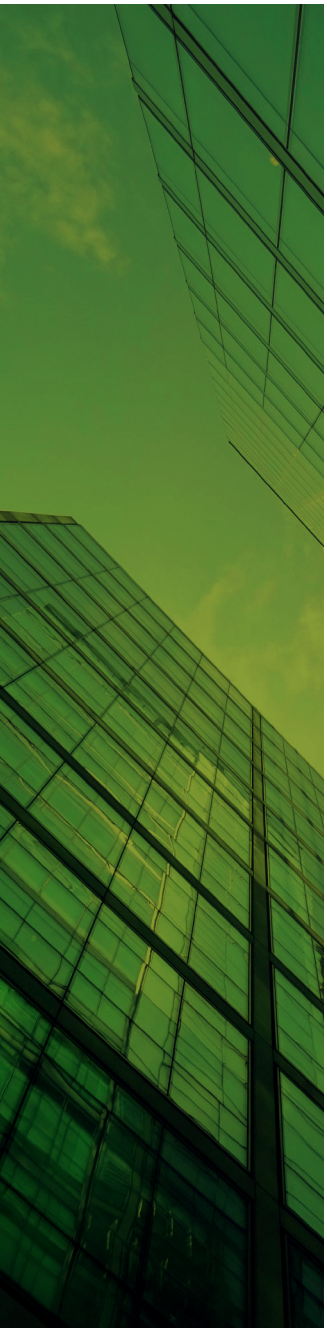
Introduction

Below we present a summary of the most significant legal developments affecting the commercial real estate sector in the first half of 2025. This overview covers both regulations already enacted and legislative proposals currently under discussion. Although recent months have not seen a large number of finalized legislative changes, several new regulations merit particular attention.

The most important change for the market is the postponement of the spatial planning reform. Originally, the key phase of the reform was scheduled to take effect at the end of 2025, at which point local spatial development studies were to expire. This would have made it impossible to obtain zoning decisions for areas without adopted general plans. This deadline was widely criticized as being too short and unrealistic from the perspective of local authorities working on these plans. The new deadline of mid-2026 will give municipalities more time for planning work, and investors more time to apply for zoning decisions under the current rules. In practice, submitting a zoning decision application by 30 June 2026 will allow investors to obtain a decision even if a general plan has not yet been adopted in a given municipality. This is particularly important for investors planning warehouse projects, which – under the already enacted regulation on the designation of infill development areas – will not be taken into account when designating such areas, which will significantly affect the possibility of situating warehouses on land without a local development plan. Importantly, the postponement will not delay the introduction of time limits for zoning decisions – all decisions that do not become final by the end of 2025 will expire five years after becoming final.

Also noteworthy is the Act on the Protection of the Population and Civil Defense, passed at the end of 2024 and commonly referred to as the “Shelter Act”. This law introduces new obligations for the real estate sector regarding the provision of so-called collective protection facilities (shelters, hideouts, and temporary hiding places). Although the Act has been in force since 1 January 2025, the implementing regulations are still pending – although draft versions have already been made public. The main concern among investors is the potential impact of these new obligations on the cost of constructing and adapting buildings to meet the new requirements. Importantly, the Act provides for the possibility of obtaining targeted grants to cover up to 100% of the costs associated with providing protective structures. However, it remains uncertain to what extent such grants will actually prevent an increase in construction costs and, consequently, rising property prices.

Significant debate has also arisen around the amendment to the Developer Act, widely referred to as the “Residential Price Transparency Act”. While the goal of the new regulations has generally been welcomed, there are numerous concerns regarding the quality of the legislation and the practicalities of its implementation. The Act, was rushed through parlia-



ment ahead of the presidential election and has been criticized by both developers and legal professionals. The main issues include unclear rules for presenting apartment prices and information on additional benefits for developers, the requirement to report this data daily to the Minister of Digital Affairs, and the extension of these requirements to entrepreneurs who are not professional developers but sell apartments previously purchased on the primary market. As a result, despite its well-intentioned objectives, the Act raises more questions than answers and introduces additional uncertainty for participants in the residential market.

Among the legislative proposals still under development, particular attention should be paid to the so-called "Land Supply Act," which aims to release agricultural land for residential development and introduce a range of investment incentives. So far, however, this draft has not progressed beyond the stage of inter-ministerial consultation.

The long-awaited draft act on Polish REITs is also yet to be published. Although there have been unofficial announcements that it would be published after the presidential elections, in the current political situation it is difficult to predict when this will actually happen.

All the above changes and legislative proposals are discussed in more detail below.

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2. Enacted legislation

2.1 Postponement of Changes in Spatial Planning and Development

On 7 May 2025, the Act of 4 April 2025 Amending the Spatial Planning and Development Act and Certain Other Acts entered into force.

In addition to procedural and technical modifications, this amendment introduced new deadlines for key aspects of spatial planning reform:

a) the deadline for municipalities to adopt general plans has been extended to 30 June 2026 (previously set for 31 December 2025);

b) the validity of local spatial development studies has also been extended to 30 June 2026 unless a general plan is adopted earlier in a given municipality, in which case the study will expire upon adoption of the general plan;

c) the so-called "Lex Developer" regime will also remain in force until 30 June 2026.

As a result, any applications for zoning decisions submitted before 1 July 2026 (or before the entry into force of a general plan) will continue to be processed under the existing rules after that date, regardless of whether a general plan is adopted for the relevant area following the application.

The date from which newly issued zoning decisions will be valid remains unchanged. All zoning decisions that do not become final before 1 January 2026 will expire five years after becoming final.

This amendment is a response to requests from municipalities, planners, and the real estate sector to extend the validity of spatial development studies, given the challenges faced in adopting general plans. The six-month extension is intended to help avoid a planning standstill and the inability to adopt new local development plans or issue zoning decisions in municipalities that have not managed to introduce new general plans on time.

Separately, in early May 2025, a draft of another amendment to the Spatial Planning and Development Act was submitted for consultation, aiming to allow municipalities to issue decisions on the location of public purpose investments after 30 June 2026, even if a general plan has not yet been adopted.

According to the legislator, the proposed change will allow municipalities to maintain continuity in carrying out essential public purpose investments while work on general plans and the corresponding designation of infill development areas is still ongoing.

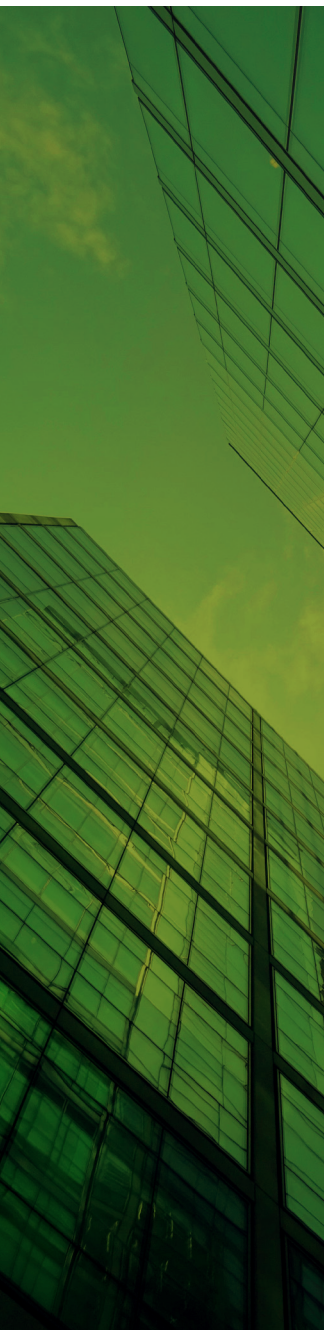
It is also important to note that, as a rule, from 1 July 2026 zoning decisions may only be issued for areas covered by general plans, and only within specifically designated infill development areas. For such areas, the regulation of the Minister of Development and Technology of 2 May 2024 on the method for designating infill development areas remains in force. According to this regulation, warehouse buildings are not taken into consideration when designating such areas, which in practice may prevent warehouse projects from being implemented on land not covered by local development plans.

2.2 The “Shelter Act”

On 1 January 2025, the Act of 5 December 2024 on Act on the Protection of the Population and Civil Defense – commonly known as the “Shelter Act” – entered into force.

The Act aligns with wider European trends aimed at increasing security and readiness for emergencies, in particular by ensuring the availability of shelters and safe spaces for the civilian population, as well as evacuation procedures in the event of a threat.

Due to the need for appropriate infrastructure, the Shelter Act provides that buildings may be designated as protective structures based on an administrative decision or an agreement between the civil protection



authority and the building owner. Responsibility for identifying which existing or planned buildings will serve as shelters, hideouts, or temporary safe spaces lies with the civil protection authority.

The Shelter Act distinguishes between two categories of protective structures: closed, hermetically sealed structures equipped with filtration and ventilation devices or absorbers (**shelters**), and non-hermetic structures (**hideouts**). Both types of protective structures, along with so-called **temporary safe spaces**, are collectively defined as collective protection facilities under the Shelter Act.

The regulation also requires that shelters and hideouts must be provided in public use buildings, if justified and technically feasible based on the building's construction and technical solutions. Detailed criteria for designating which public use buildings must include protective structures will be specified in a regulation of the Council of Ministers, the draft of which is currently under review (see section 3.1 below).

Additionally, the Shelter Act requires that underground levels of multi-family residential buildings, public use buildings, and underground garages (if no protective structures are planned), must be designed and constructed in a manner that enables temporary safe spaces to be organized.

These requirements will apply to projects for which a building permit application, separate decision approving a site development plan, architectural or construction design, or a notification is submitted after **31 December 2025**.

2.3 Amendments to the Developer Act – So-Called "Residential Price Transparency Act"

On 21 May 2025, the Sejm (Lower House of the Polish Parliament) adopted an amendment to the Act of 20 May 2021 on the Protection of the Rights of Buyers of Residential Units or Single-Family Houses and on the Developer Guarantee Fund (commonly referred to as the **"Residential Price Transparency Act"**).

The amendment introduces new obligations for developers, including:

a) the requirement to maintain their own website, on which, from the date of commencing sales (or, in the case of reservation agreements, before the first such agreement is concluded) until the transfer of ownership of the last property covered by the development project or investment task, the general section of the information prospectus must be made available, as well as, among other things:

   i. the gross price per square meter of usable floor space for each residential unit or single-family house offered as well as the total gross price for the entire property or the part subject to the agreement;

ii. the gross price of ancillary premises or rights necessary to use the residential unit or single-family house if this price is not already included in the main price;

iii. the gross amount of any other monetary payments which the buyer is required to make to the developer under the agreement transferring ownership.

b) the obligation to update prices on the website on an ongoing basis, retaining previously published information and indicating the date of any change;

c) the obligation to submit the above information daily to the Minister of Digital Affairs;

d) the obligation to include the website address in all advertisements, announcements, and sales offers addressed to buyers.

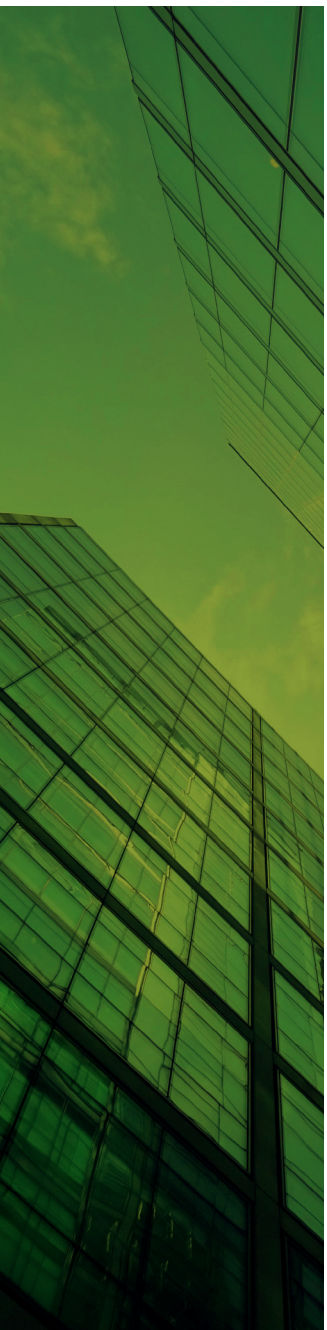
At the same time, in the event of a discrepancy between the price published by the developer as described above and the price offered at the time of concluding the agreement, the purchaser of a residential unit or single-family house will have the right to demand that the sale be completed at the most favorable price.

The above obligations will also apply, as appropriate, to developers selling already completed (separate) residential units or single-family houses as well as to other entrepreneurs selling, for the first time, units or houses created as part of a development project or investment task.

A breach of the main obligations introduced by the Residential Price Transparency Act will constitute a practice infringing the collective interests of consumers within the meaning of Article 24(2) of the Act on Competition and Consumer Protection. As a result, for a breach of any of these obligations – even if unintentional – the President of the Office of Competition and Consumer Protection (UOKiK) will be entitled to impose a fine of up to 10% of the turnover achieved in the previous financial year.

Importantly, developers who commenced the sale of residential units or single-family houses within a development project or investment task or who commenced the sales referred to in Article 3(1) or Article 4(1) of the Developer Act before the amendment entered into force, will be required to apply the new regulations (with respect to units and houses for which ownership has not yet been transferred) within two months from the date the Act comes into force.

The Act has been widely criticized for its imprecise language and numerous ambiguities. The main concerns relate to the obligation for developers (and other entrepreneurs) to maintain their “own website,” as well as the method and scope of price presentation, which must include not only the price per square meter of a residential unit, but also the „total price of the property,” prices of ancillary premises, and „other monetary



obligations." The manner and scope of daily updating and reporting of this information to the Minister of Digital Affairs also remain unclear. Since, under the Act, any breach of its requirements will constitute the punishable offense of infringing collective consumer interests, and since purchasers will have the right to demand the more favorable price, all these ambiguities create a significant risk for the development sector.

The Residential Price Transparency Act was signed by the President on 5 June 2025 and will enter into force one month after its publication in Dziennik Ustaw.

2.4 Amendments to the Aviation Law

On 25 January 2025, the Act of 5 December 2024 Amending the Aviation Law entered into force, enabling projects to be carried out on land covered by airport master plans. The amendment eliminates the requirement to prepare local development plans for areas included in airport master plans, thereby allowing zoning decisions to be issued for such areas.

Previously, under Article 55(9) of the Aviation Law (repealed by this amendment), administrative proceedings concerning zoning decisions within airport master plan areas were routinely suspended. Such areas often extended far beyond the airport itself. In Warsaw, for example, this covered more than a quarter of the city's area. Investors across the country were frequently caught off guard by indefinite suspension (until a local development plan was adopted) of proceedings regarding their applications for zoning decisions, often for large-scale projects. The current amendment resolves this issue by removing the requirement to prepare local development plans for areas covered by airport master plans and instead introduces a requirement for the President of the Civil Aviation Authority to review draft zoning decisions for such areas.

Additionally, just a few months later, on 9 April 2025, the Act of 7 March 2025 Amending the Aviation Law entered into force. This amendment introduced an obligation to notify the Minister of National Defense of construction projects with a height between 50 and 100 meters, provided that they have not already been entered into the register of aviation obstacles. The notification must be made no later than two months before the structure reaches a height of 50 meters.

The main purpose of this amendment is to enhance the safety of military air traffic, which is particularly important at present given the sharp increase in military air operations and the expansion of military infrastructure.

For structures that had already reached the specified height before the amendment entered into force, the legislator has set a three-month deadline for notification, i.e., 9 July 2025.

Failure to make the notification constitutes a criminal offense, punishable by up to one year of imprisonment.

3. Legislation in progress

3.1 Draft Regulation of the Council of Ministers on Public use Buildings Required to Provide Protective Structures

In connection with adopting the so-called "Shelter Act," work is underway on a regulation specifying which public use buildings must be equipped with protective structures.

The current draft regulation, prepared by the Ministry of the Interior and Administration (listed as RD178 in the Government Legislative Centre register), is at the consultation stage.

In its present form, the draft envisages that protective structures should be provided in public use buildings that have at least one underground level and are:

a) intended for public administration, the judiciary, healthcare, or permanent stationing of civil protection entities;

b) intended for office, education, culture, tourism, or sports purposes if more than 50 people may be present at one time in the area used for public use purposes; and

c) other types of public use buildings if more than 100 people may be present at one time in the area used for public use purposes, or if that area exceeds 2,500 sqm.

The draft regulation also allows, under certain circumstances, for an exemption from the requirement to provide a protective structure in public use buildings that otherwise meet the above criteria. Such circumstances include:

a) the inability to meet the technical requirements for a shelter or hideout within the building;

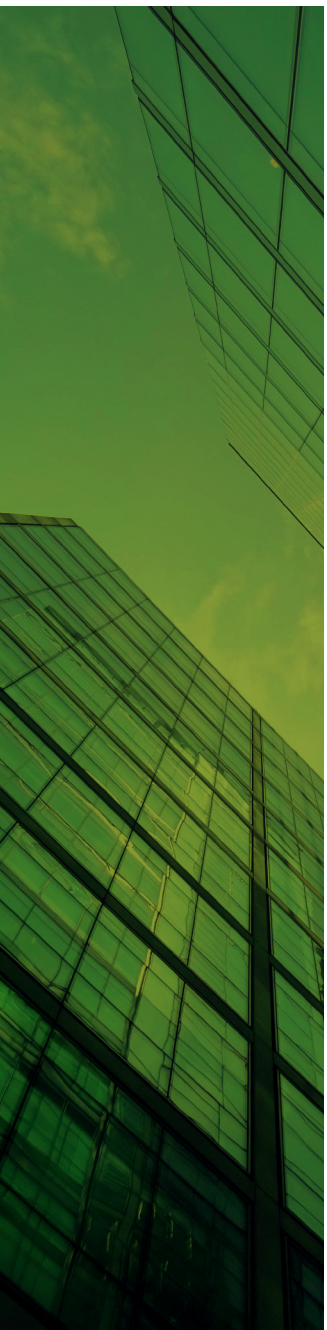
b) no necessity to provide a specific number of shelter places;

c) no economic justification for the investment required to provide a protective structure.

In specifically defined situations, it will also be possible to provide protective structures outside public buildings as an alternative to locating them within the building itself.

3.2 The Act on Measures to Increase the Availability of Land for Residential Development – the so-called "Land Supply Act"

In February 2025, a draft Act on Measures to Increase the Availability of Land for Residential Development (the so-called "Land Supply Act"; project number UA10 in the Government Legislative Centre register) was submitted for inter-ministerial consultations.



The draft proposes a range of solutions intended to increase the availability of land for residential development and promote investment in this sector, including:

a) enabling municipalities to acquire, free of charge, properties from the resources of the National Support Centre for Agriculture (KOWR) or from state-owned companies, provided such properties can be allocated for residential purposes;

b) a two-year moratorium on the collection of annuity fees (renta planistyczna) from the date the Act enters into force;

c) allowing investors undertaking non-road projects that require the construction or reconstruction of public roads to provide financial resources to the relevant road authorities for this purpose, instead of taking on the obligation to carry out the roadworks themselves;

d) expanding the list of supplementary investments under an integrated investment plan, including tasks that fall under the municipality's own responsibilities, as well as amending provisions relating to the procedure for adopting integrated investment plans;

e) excluding the application of the Agricultural System Act to agricultural land located within city administrative boundaries;

f) for projects implemented under the "Lex Developer" regime, removing the requirement for a minimum proportion (5%) of the usable residential area to be allocated for commercial or services activities, and eliminating the obligation to provide developed recreation, leisure, or sports areas, and the minimum ratio for parking spaces;

g) reintroducing the possibility of establishing perpetual usufruct rights for residential purposes.

3.3 Amendment to the Construction Law and Certain Other Acts

In June 2025, a draft amendment to the Construction Law and certain other acts (project number UD22 in the Government Legislative Centre register) was submitted to the Standing Committee of the Council of Ministers.

The amendment proposes incorporating a number of definitions into Article 3 of the Construction Law currently found in the regulation on the technical conditions that buildings and their location must meet. These include definitions of residential building, multi-family residential building, farm building, public use building, and collective residential building (which would also cover apartment hotels). The aim is, among other things, to clarify that apartment hotels do not constitute residential buildings, which may have an impact on investments in the PRS (Private Rented Sector).

The draft also proposes to further expand and clarify the list of construction projects that do not require a building permit but only need to be notified (e.g., private shelters and hideouts with a usable area of up to 35 m² intended to protect users of a single-family residential building), as well as projects for which neither a building permit nor notification is required.

As part of simplifying procedures related to energy transition, it is envisaged that installing electricity storage units with a capacity not exceeding 20 kWh will not require a building permit or notification. Such installations are expected to be part of photovoltaic systems. This exemption from the building permit requirement will also apply to the installation of technical devices – micro-installations with masts for wind energy generation – with a total height of more than 3 meters but not exceeding 12 meters.

The draft further provides that if significant deviations from the approved construction design are found during construction works, the works will not be suspended. Instead, the investor will receive a so-called „yellow card" – a warning from the authority to bring the works into compliance with the law. Only if the investor fails to make the works compliant within 60 days of receiving such a warning will remedial proceedings be initiated, as set out in Articles 50–51 of the Construction Law (suspension of works and an order to adapt the building, followed by resumption of works, and, in extreme cases, demolition).

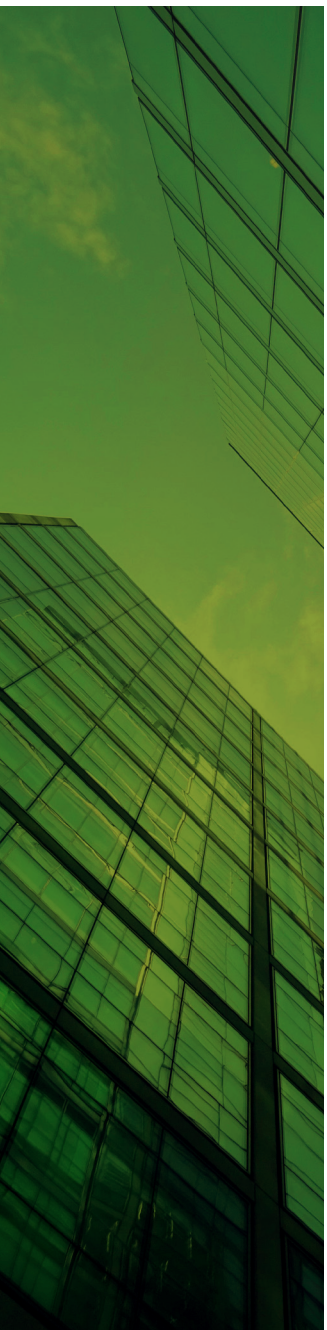
4. Selected case law

4.1 Judgment of the Supreme Administrative Court of 17 March 2025 (Case No. II OSK 1257/22) concerning Stobnica Castle

In this judgment, the Supreme Administrative Court (NSA) definitively ruled that the building permit for the now famous "Stobnica Castle" could not be declared invalid.

This judgment deserves attention not only because of the highly publicized background of the case. Its significance also stems from the fact that it is yet another decision by the Court that confirms an emerging line of case law: Article 37b of the Construction Law, which prohibits invalidating building permits five years after they are issued, also applies to cases initiated but not concluded before the 2020 amendment that introduced this provision.

Doubts in this area arose from the wording of one of the transitional provisions (Article 25) of the amendment introducing this rule into the Construction Law. According to this provision, cases governed by the Construction Law that were initiated but not concluded before the amendment came into force should be governed by the previous regulations.



Until now, two divergent approaches – both supported by NSA judgments – have emerged on this issue. According to the first (as expressed, for example, in NSA judgments II OSK 569/22 of 11 January 2023 and II OSK 1052/22 of 14 September 2024), ongoing proceedings for declaring a building permit invalid – although generally conducted under the Code of Administrative Procedure rather than the Construction Law – were considered to fall under Article 25 of the amendment, meaning that Article 37b of the Construction Law did not apply.

According to the opposing view, now seemingly prevailing, transitional Article 25 should be interpreted strictly and relate only to matters explicitly regulated by the Construction Law. This is not the case with extraordinary proceedings to invalidate an administrative decision as they are governed by the Code of Administrative Procedure. This view was also adopted by the NSA in the Stobnica Castle judgment and previously in judgments II OSK 304/21 of 6 July 2023, II OSK 1155/22 of 11 October 2023, II OSK 2529/21 of 11 September 2024, and II OSK 1530/22 of 18 February 2025.

As can be seen, the second interpretation – which better aligns with the purpose of introducing into the Construction Law the prohibition on invalidating historical building permits (and, by analogy, occupancy permits) – is being confirmed more frequently and in more recent NSA judgments, with the Stobnica Castle case being a prime example. These judgments also unanimously confirm (an issue previously debated among practitioners) that the prohibition on invalidating building and occupancy permits that are more than five years old also applies to decisions issued prior to the entry into force of the 2020 amendment.

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Legal status as at 6 June 2025.

Polska Izba Nieruchomości Komercyjnych

The Polish Chamber of Commercial Real Estate

Since 2016, the Polish Chamber of Commercial Real Estate has brought together representatives from all sectors and services of the commercial real estate market in one organization, enabling them to have a real impact on the surrounding economic, political, and social environment. The PINK Association is both their representative and a platform for exchanging experiences, knowledge, and cooperation. By collaborating with other organizations, it promotes best practices in the commercial real estate market. The Association includes developers, investors, asset managers, property managers, design companies, construction consultants, real estate market advisors, as well as legal, tax, and financial advisory firms.

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