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LAW ON HOUSING
AND MAINTENANCE
OF APARTMENT
BUILDINGS

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The rights and obligations of people who live in apartment buildings, maintenance of apartment buildings and relationships between the owners of apartments have never been regulated in Serbia comprehensively and in detail. Earlier regulations have exhibited inefficiency in most sensitive and important situations, such as removing the risk of damage and compelling owners of apartments to fulfil their obligations if they refuse to do so. The previous Law on Maintenance of Apartment Buildings was, in essence, applied efficiently only when it came to deciding on use of common areas of the buildings.

The previous Law on Maintenance of Apartment Buildings had been in application over the past twenty years. During this period apartment owners entirely lost all awareness of the fact that, apart from ownership rights to their apartments, they also have certain obligations regarding the buildings in which these apartments are located and that these obligations have to be fulfilled on a regular basis. This particularly relates to maintenance of apartment buildings in context of removing risks to life and health, to the environment and to valuable property, as a public interest.

For this very reason it became necessary to change the legal framework governing this area and introduce new mechanisms that enable more efficient implementation of regulations, reinstating awareness of obligations that accompany ownership rights to apartments and more precisely regulate relationships between apartment owners.

After twenty years, the new Law on Housing and Maintenance of Apartment Buildings is aimed at introducing more order into the area of housing and maintenance of apartment buildings.

Among other matters, the new Law on Housing and Maintenance of Apartment Buildings regulates the rights and obligations of owners of separate parts of buildings, as well as the manner of managing, using and maintaining buildings, in addition to making an attempt to ensure consistent and proper application of the law, particularly as it relates to maintenance. Rights and obligations of owners of separate and standalone parts of buildings

The previous Law on Maintenance of Apartment Buildings failed in: clearly delineating separate parts of buildings; clearly defining the difference between apartments and business premises; recognizing garages and parking spots as building parts. Thus management of buildings was not clearly defined, given that the rights of owners of separate parts of buildings which have a special purpose were unclear.

The new Law clearly defines separate parts, the difference and boundaries between separate parts and common areas of buildings, and the legal regime of ownership over all parts of buildings, including walls and installations. Apart from separate parts and common areas, the new law also introduces the category of standalone parts of buildings - rooms with technical equipment - which are owned by the entity that owns the installations. Clearly differentiating between the different parts of a building enables differentiating between the responsibilities of owners of the separate parts.

The owners of separate and standalone parts of buildings, apart from having ownership rights over their separate parts of the building, are also entitled to take part in management of the building, carry out repairs on common areas that are necessary in order to remove risk of damage to their respective separate parts, make alterations to their separate parts without affecting other areas of the building and use the common areas of the building. The rights of apartment owners are formulated so as to practically constitute a limitation of ownership rights to the separate part and the obligation of apartment owners to respect the rights of other separate parts owners when exercising their own rights. The legal obligations of apartment owners, as indeed their rights, constitute a limitation of ownership rights in the interest of protecting the building and the owners of its other separate parts.

A new element that has now been introduced is the obligation of each owner of a separate part of the building to allow passage through his/her separate part if necessary for the maintenance or repair of another part of the building or for fulfilment of some other legal obligation. The reason for this provision, which admittedly does intrude into ownership rights, is clear and justified. However, the law failed to regulate in detail the procedure of enforcement against an apartment owner who does not permit access to his/her apartment. If access to somebody else's apartment is urgent, but the owner objects, the law has to prescribe a mechanism to properly enforce this provision. There is also the issue of who is competent to decide whether repairs or maintenance are necessary, by way of gaining access into somebody else's apartment.

Management of buildings

The law prescribes that each building is to be managed by a building community comprised of owners of its separate parts. The community is to be recorded in a separate register, in a procedure before the local governing administration. The registration procedure and content of the register are specified by the Law, however as the purpose of registration is unknown it appears that the obligation of citizens to register their building community is not justified.

The mere existence of a register containing such data is useful, but the obligation to register is pointless, and to citizens who will have to pay registration duties and fees it represents an unnecessary expense. The idea of a voluntary register is justified, but establishment of a compulsory register of building communities is a burden with no justification. Namely, apartment owners will now have to pay the registration costs, and will later have to pay the costs of maintaining bank accounts, preparing annual financial statements and other costs they will incur solely because this new Law has been adopted.

A positive new element of the Law is the right of owners of separate parts of a building to, unanimously, reach a decision on the mutual relationships between the owners of the separate parts of the building. These rules, which will be publicly accessible by way of the register of building communities, will allow apartment owners to regulate their mutual rights and obligations and specify manner of adopting acts and decisions, including the manner in which management bodies are to take action in specific situations. These rules can significantly enhance management of buildings. Given that way in which management bodies of the building are to act in specific situations can be specified, this would improve both the efficiency of implementation of the Law and maintenance of buildings.

Buildings, or rather building communities, will be managed by a management committee and a manager. Two managerial bodies were prescribed in the previous law as well, but their rights and obligations are now specified in more detail.

A building management committee will decide on important issues such as appointing and removing the manager, taking out loans, using common areas, adopting maintenance programs, the amount of a monthly maintenance fee etc. The committee will decide by a simple majority of votes of present members, except for certain issues such as taking out loans and appointing a professional building manager where a two-thirds majority of votes of the building community's management committee will be required. The building manager will represent the building, carry out the decisions of the building community, manage the registration procedure, ensure regular maintenance program, organize urgent repair works and the like. The manager will be appointed by the management committee by simple majority. The manager can be a member of the building community's management committee, but the committee may also opt to hire a professional management organization to fulfil that role. A professional management organization is a company which must employ at least one licensed building manager recorded in the register of professional managers, maintained by the Serbian Chamber of Commerce.

A professional manager may also be appointed to manage a building community as an administrator if the building community is not registered or has not appointed management bodies (a management committee and a building manager). The administrator will undertake all obligations of a professional manager and will carry out these obligations until a new manager is appointed, or, until an agreement on professional management is reached. Professional managers must carry professional liability insurance with coverage of not less than EUR 10,000. The provisions regulating the appointment of management bodies and manner of taking action in certain situations are a logical solution, particularly when building communities are not interested in organizing themselves and fulfilling their obligations. The Law has thus protected the public interest in preventing and removing risks to life and health, to the environment and to valuable property. Administration has to exist in building communities in order to protect the public interest irrespective of the will of individual owners. However, the Law has failed to restrict the administrator's powers, particularly with regard to remuneration fee for such work, which will leave room for abuse of this position.

Maintenance

Owners of apartments and separate building parts are obliged to carry out activities aimed at building maintenance (regular maintenance, urgent repair work and investment maintenance). The owners of separate parts will be jointly and severally liable for damage caused to third parties through failure to carry out or to properly carry out the duties within the competence of the building community, including cases when it is impossible to determine the specific separate part from which the damage originated. Local self-government units will be in charge of inspecting whether maintenance work is carried out, and if it is found that it is not, and that damage could be subsequently caused to lives and health of people, to the environment or to valuable property, the local self-government unit will take over and either carry out or outsource the maintenance work. The local self-government unit will adopt an act on the minimum sum for regular maintenance of buildings, an act on the fee amount to be paid in case of administration and an act on the minimum sum to be set aside for investment maintenance costs.

The costs of regular maintenance and management will be paid in equal shares for each separate part, while the costs of investment maintenance will be paid in proportion to the surface area of each separate part. The costs of regular and investment maintenance may not be less than the minimum amount as specified by the local self-government.

In the regular course of affairs the management committee of each building community has to render a decision on the amount to be paid for regular and investment maintenance. These funds are to be paid into the building's bank account, and disbursed by the building manager, who shall then report to the building community's management committee. The manager is also in charge of proposing a regular maintenance program to the committee, and in charge of carrying out the program. Ideally, this concept would be entirely suitable but the same concept was applicable under the previous law as well, substantially limited by the lack of willingness of each individual building community to implement it.

In emergencies, which can be expected to be common, the local self-government units will appoint administrators to building communities, since it is extremely likely that most building communities will not be formed and registered. Administrators have restricted powers regarding the obligation of maintenance of the building, and the fee for their work is determined by an act rendered by the local self-government. On the other hand, administrators have full discretion when it comes to deciding which work is to be carried out and what is to be done with regard to maintenance of a building. Regarding these costs administrators have no restrictions, and are supervised by the authorities that appoint them, even though the costs will ultimately be borne by the apartment owners.

The new Law on Housing and Maintenance of Apartment Buildings introduces important new elements, and will undoubtedly play a part in resolving the issue of apartment buildings maintenance.

On the other hand, a large number of issues has remained unresolved, such as forced collection of dues for maintenance and the manner of exercising the right to enter somebody else's apartment for repair or maintenance of another part of the building. Furthermore, the additional expenses arising from the obligation to register building communities, maintain a bank account, prepare financial statements are unfair and burdening, lacking justification. On the other hand, apartment owners do need to become aware of their responsibilities, and the fact that they have an obligation to maintain buildings they live in, including payment of expenses. The solutions put in place by the new Law are conceptually justified and quite acceptable, yet in some respects fail to take into account relics from the past and the fact that this area of law has been so far substantially neglected and unregulated.

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