

## FUNCTIONING AND MANAGEMENT OF HOUSING COMMUNITIES: SELECTED ISSUES

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**Abstract.** The article discusses selected problems related to the operation of housing communities, especially those related to the residents who do not pay their rent or disrupt domestic order. It is shown that the current legal regulations do not protect honest residents from the misbehaviour of other residents. New regulations are needed to facilitate the collection of rent arrears and the removal of disruptive residents from the housing community.

**Keywords:** housing community; cost; coexistence.

### INTRODUCTION

There are many housing communities in Poland. Each multi-unit building may constitute a housing community or be part of the resources of a housing cooperative. It is difficult to indicate a specific number of housing communities,<sup>1</sup> because they are not subject to entry in any register, i.e. neither the national court register, or the central register and information on economic activity, nor any other. A large number of owners of independent residential premises or premises for other purposes in a housing community causes difficulties, including: management of common parts, settlements with people who sell premises and cease to be members of the community, disposal of associated rooms.

The text identifies selected areas in which functioning and administration of housing communities encounter difficulties and suggests directions for

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<sup>1</sup> Information that can be found on the Internet about the number of housing communities in Poland indicates a large discrepancy from 5 million housing communities, <https://obiektymieszkalne.muratorplus.pl/zarzadzanie-i-eksploatacja/wspolnota-mieszkaniowa-czym-jest-wspolnota-mieszkaniowa-o-czym-moze-decydowac-aa-1Wad-D7G2-wGbT.html> [accessed: 23.05.2023], <https://strefabiznesu.pl/mieszkanie-lub-dom-we-wspolnocie-znaj-swoje-obowiazki-korzystaj-z-praw-czlonka-wspolnoty-mieszkaniowej-radzi-ekspert/ar/c3-14302163> [accessed: 23.05.2023] to 183,775 housing communities that are in the database, [https://www.coig.com.pl/wykaz\\_lista\\_baza-wspolnoty-mieszkaniowe.php](https://www.coig.com.pl/wykaz_lista_baza-wspolnoty-mieszkaniowe.php) [accessed: 23.05.2023]. The first result is quite realistic, because each block of flats can constitute a housing community.

changes in legal regulations that would solve these difficulties. The starting point for the undertaken research is the thesis that legal regulations regarding functioning a housing community are, in their current form, insufficient to protect honest residents against dishonest residents who do not pay rent and other fees to the housing community or who disturb neighbourly relations. The Act on the Ownership of Premises<sup>2</sup> indicates two types of housing communities: up to three separate premises and non-separate premises, the so-called small communities, and with more than three separate premises and non-separate premises, the so-called large communities (Article 19 AOP). The given study deals with large housing communities.

The article uses the dogmatic-exegetical method to analyse legal texts and the method of legal functionalism, illustrating the legal norm in practice.

## 1. THE COSTS OF MANAGING COMMON PROPERTY

Provisions of Article 18(1) and (2) AOP provide that the owners of premises may specify the method of managing the common property in an agreement establishing separate ownership of the premises or in an agreement concluded later in the form of a notarial deed. And in the event of successive separation of premises, the method of managing the common property adopted by the current co-owners also applies to each subsequent buyer of the premises. The provisions of Article 20 AOP and Article 199 of the Civil Code<sup>3</sup> define the statutory method of managing a housing community; the provisions of Article 18(1) AOP and Article 185 of the Real Estate Management Act<sup>4</sup> indicate the possibility of specifying the management of a housing community in an agreement, while the provisions of Article 203 CC, and Article 612, 938 of the Code of Civil Procedure<sup>5</sup> indicate the possibility of coercive management of the housing community [Gniewek 2013, 843, 854, 862-863]. The method of managing a shared property is most often specified in a notarial deed regarding the establishment of the first premises constituting separate ownership and its sale, by entrusting the management to a natural or legal person who is the property manager, i.e. an entrepreneur conducting business activity in the field of real estate management (Article 184a REM). In practice, the future first owner of the separated premises and the sold residential premises has no influence on the choice of the method of managing the common property.

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<sup>2</sup> Act of 24 June 1994 on Ownership of Premises, Journal Laws of 2021, item 1048 [hereinafter: AOP].

<sup>3</sup> Act of 23 April 1964, the Civil Code, Journal of Laws of 2023, item 1610 [hereinafter: CC].

<sup>4</sup> Act of 21 August 1997 on Real Estate Management, Journal of Laws of 2023, item 344 [hereinafter: REM].

<sup>5</sup> Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2023, item 1550.

Subsequent natural persons, legal persons, or organizational units without legal personality cannot change the method of managing the common property in subsequent agreements on establishing separate ownership of premises and their sale (Article 18(2) AOP). The method of managing the common property chosen during the first agreement to establish separate ownership of the premises and its sale in a housing estate consisting of several hundred apartments is often binding on the conclusion of the last agreement to establish separate ownership of the premises and its sale. An entrepreneur building a multi-apartment estate and selling residential premises and premises for other purposes (a developer) often decides in the first agreement establishing separate ownership of the premises and its sale that the common property will be managed by himself or by a manager chosen by him and organizationally related to him (e.g. a family member running a property management business) or capital (e.g. subsidiary). The purchaser of a residential premises or premises for other purposes has no influence on the shape and content of the management contract concluded between the developer and the manager (Article 185(2) REM). Outside para. 2 remaining paragraphs in Article 185 REM have been repealed, so the Real Estate Management Act does not indicate the *essentialia negotii* of real estate management contracts [Jaworski, Prusaczyk, Tułodziecki, et al. 2023]. The management contract is a paid contract [ibid.]. The amount of remuneration for managing common property can be set quite freely, and it directly affects the amount of rent paid by entities purchasing premises, e.g. for 1 m<sup>2</sup> of premises fees incurred for future renovations of common property, etc. This may be a source of extraordinary profits for the entity managing the common property. Whereas, for purchasers of the premises it may result in an excessive burden of the amount of rent paid and other fees for the common property, which are disproportionately high compared to the residents of housing communities whose inhabitants have changed the method of managing the common property to the so-called ownership (i.e. they elected a management board from among themselves or entrusted management to an entity of their choice).

This unfavourable situation for the owners purchasing premises in newly constructed multi-apartment buildings will last at least until the land and mortgage registers are established for premises whose area exceeds half of the building's area. The waiting time for establishing a land and mortgage register for a new mortgaged residential premises ranges from several days to a few weeks if the property is to be mortgaged, and up to one year or longer without a mortgage. Only then can the residents organize a meeting of the owners of the premises and adopt a resolution on changing the method of managing the common property, as they are able to outvote the developer. With the successive separation of premises, a question arises as to how

the entrepreneur (developer) is to vote during the meetings of the housing community. Is what he has not sold one unit or does he have as many votes as may be allocated in the future? In the latter case, the protection of minority owners resulting from Article 23(2) AOP is illusory when voting at community meetings, since the owner of non-separate premises can claim that he has as many votes as the number of premises he can theoretically separate (establish separate ownership) [Badura and Kaźmierczyk 2020]. It is assumed that the developer votes with a share in the common property, including a share in the common property equal to the area of non-separate premises to the total area of the building.

Adopting a resolution on changing the method of managing the common property from entrusted to owner-like allows the residents of the housing community to elect their own management board (Article 20(1) AOP), which may manage the common property or select the manager of the common property following the collection of offers. Only then is the fee paid by residents for managing the common property reduced and they have an influence on the amount of payments for the renovation of common property, i.e. roofs, gutters, facades, sidewalks, internal roads, garbage buildings, playgrounds, etc.

The free market and freedom of contracts in the initial period of operation of housing communities fail in terms of management costs. Owners of residential premises often incur excessive fees for managing common property. Such situations can be prevented by statutory regulation of the content of the common property management agreement in terms of maximum fees, among others, for management; the amount of rent paid by the owners of the premises per 1 m<sup>2</sup> of the premises; the amount of fees for future renovations, etc., in the period from the date of separation of the first premises to the date of the election of a new management board by the residents. As a *de lege ferenda* postulate, it can be indicated that the amount of the above-mentioned fees should not exceed the average fees applicable in the district for the management of housing communities.

The second financial issue that needs to be resolved is the problem of returning the funds that owners and residents contribute for possible renovations of the common property. The amount of these fees is usually calculated as the product of the area of the premises together with the area of the adjacent rooms multiplied by a specific amount of money, e.g. PLN 1, PLN 1.35, etc. Fees for future renovations are usually paid from the separation of the first premises. In new housing communities, there is often no need to carry out any renovation work on common areas, or only minor ones are carried out. People, selling premises shortly after purchasing them, may incur fees for future renovation expenses that will not be incurred while they are owners of the premises or the funds will only be partially used for these

purposes. It happens that the owner of the premises regularly pays contributions for possible future renovations, later sells the premises, and while he was a member of the housing community, no renovation of the common properties was carried out. After selling the premises, its owners should be reimbursed at least part of the fees paid for future renovations, but not all of them, because they contributed to the need for their renovation in the future while they were using the common properties. A resolution in this respect may be adopted by the owners of premises in a housing community, but this does not actually happen. This is another situation in which the market and the freedom of operation of entities fail. In this respect, it is also advisable for the legislator to intervene and introduce provisions into the Act on the Ownership of Premises, indicating the obligation to return part of the funds paid by the owners of the premises for renovation purposes when they sell the premises, if during the time they were residents of the housing community, no renovation work was carried out or they were carried out only to a limited extent.

## 2. THE PROBLEMS OF COEXISTENCE WITH TROUBLESOME RESIDENTS AND TENANTS OF THE PREMISES

The provision of Article 16 AOP stipulates that the housing community may, through a lawsuit, demand the sale of the premises by auction pursuant to the provisions of the Code of Civil Procedure on real estate enforcement if the owner of the premises has a long delay in paying the due fees, or grossly or persistently violates the applicable house order, or makes the use of other premises or common property burdensome through his inappropriate behaviour. The Constitutional Tribunal in its judgment of July 29, 2013, ruled that the provision of Article 16(1) AOP is consistent with Article 64(1) and (2) in connection with Article 64 (3) and Article 31 (3) of the Constitution of the Republic of Poland<sup>6</sup> in the scope which provides for the possibility of a housing community requesting an auction sale of premises belonging to a member of this community who is in arrears with the payment of due fees for a long time. The owner whose premises have been sold is not entitled to a replacement premises. This provision is difficult to apply in practice. The state of “long-term arrears” must persist at the time when the community brings the action and the judgment is adjudicated [Izdebski 2023; Dziczek 2021].

The arrogance of some owners of residential premises, who consciously and deliberately do not pay rent, fees for managing the common property,

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<sup>6</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

or fees for future renovations for long periods of time, may last several years before the court issues a judgment allowing the sale of the premises by a court bailiff under court supervision. Qualifying the housing community's as a procedural claim allows the submitted application to be subjected to judicial review from the point of view of the prerequisites for the abuse of subjective rights provided for in Article 5 of the Civil Code, which would be difficult if it was assumed that the housing community would have the right to file a complaint under Article 16(1) CC [Izdebski 2023]. The Supreme Court ruled that the demand for the sale of premises may only apply to separate premises in its judgment of June 16, 2009, reference number V CSK 442/08. The Supreme Court adopted a rigorous grammatical interpretation which, without any justification, places the non-paying owner of premises that have not yet been separated, i.e. the developer, in a privileged position [Szymczak 2023]. If he fails to comply with his obligations in terms of paying the fees or the method of using these premises, in the opinion of the Supreme Court, excluding him from the housing community is inadmissible [ibid.]. The case law indicates that the right provided for in Article 16(1) AOP is a manifestation of the most far-reaching interference of the housing community in the ownership right to the premises, which should encourage the use of this measure of protection as a last resort when milder legal measures do not have the desired effect.<sup>7</sup> With this interpretation of Article 16 AOP by the courts, honest owners of premises pay fees for the maintenance of common parts of the property for those owners who do not pay. This may be the reason for increasing fees for the maintenance of common properties, only to ensure that payments from regularly paying residents cover the costs of managing the common property and bills for common utilities, i.e. electricity, gas, water, heating, etc. When the apartment of the owners who did not pay rent and other fees is sold, the community board usually does not adopt a resolution to refund to the residents (who regularly paid fees to the community) a part of what they paid for the former owners of the property that was sold in enforcement proceedings. This issue also requires statutory regulation in Article 16 AOP by adding paragraphs indicating how to settle and distribute the funds obtained by the housing community from the sale of the premises in enforcement proceedings.

The situation in housing communities is even more difficult, with owners of residential premises behaving in a nuisance way, disturbing the peace not only of the closest neighbours but of all the residents. Arguments, very

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<sup>7</sup> Judgment of the District Court in Gorzów Wielkopolski of 21 August 2018, ref. no. I C 1095/17, Lex no. 2695507; judgment of the Court of Appeal in Cracow of 16 June 2020, ref. no. I ACa 84/20, Lex no. 3102812; judgment of the Court of Appeal in Warsaw of 8 November 2018, ref. no. I ACa 849/17, Lex no. 2605235.

loud use of radio and television sets, aggressive behaviour towards other residents of the community may last for many years before the court decides on the forced sale of the premises of the troublesome owner. This situation even makes it impossible for the neighbours of the troublesome resident to sell their premises when the potential buyer finds out how negatively the future neighbour behaves, which is easy to check and observe. A similar situation occurs in cases of renting premises to persons who behave in a way that is bothersome to other residents of the housing community. This may be a reason for terminating the lease agreement if such a condition is provided for in the agreement. For properly behaved owners of residential premises who would like to live in normal conditions, a troublesome tenant may also cause difficulties in selling their residential premises.

The provision of Article 16 AOP does not apply to co-owners of residential or non-residential premises. A housing community cannot effectively bring an action under Article 16 AOP against only one of the co-owners of the premises, which would then aim at the forced sale of his/her share in the ownership of the premises. Justifying the claim in question, the behaviour of one of the co-owners does not burden the other co-owners [Izdebski 2023]. Therefore, the community cannot pursue a claim against all jointly entitled persons in such a case.

The above-mentioned cases of troublesome owners or tenants of premises do occur and sometimes last for a very long time before the premises are forced to be sold, but this does not apply to the situations where the tenant is a nuisance. The lack of an efficient justice system, which responds with considerable delay to the situations of permanent disturbance of the peace of the residents, proves the inefficiency of the state, which tolerates inappropriate behaviour of some residents at the expense of the peaceful owners of the premises.

The proposals for improving the legal regulations contained in the Act on the Ownership of Premises include imposing a penalty of a temporary ban on living in a housing community together with the payment of compensation to the neighbours whose peace was disturbed, or a temporary arrest, as a way to temporarily isolate a resident who behaves inappropriately. In the case of tenants who grossly or persistently violate the applicable house order, the management board of the housing community should have the right to terminate the lease agreement with an immediate effect.

## CONCLUSIONS

The legislator may approach the indicated cases of improper functioning of the housing community with indifference, concluding that since the Act

on the Ownership of Premises has not been amended in the above-mentioned scope since its entry into force on January 1, 1995, there is no need for legislative intervention. This approach is not entirely appropriate. Currently, difficulties in functioning housing communities include cases of residents who consciously and deliberately do not pay fees for the use of common property and rent, being aware that they can stop the process of forced sale when they pay several arrears of rent. Pathological behaviour of residents that blatantly and persistently violates the applicable house order also causes difficulties in functioning the residents' community. In this respect, there are no effective legal regulations that would make it possible to isolate a troublesome resident quickly for a specified period and, if this proves ineffective, to exclude the resident from the community. This proves the weakness of the state, which has long tolerated inappropriate social behaviour at the expense of honest, peaceful residents of housing communities. A ban on temporary living and staying in the community, together with a fine or temporary arrest for inappropriately behaving residents, should contribute to maintaining better neighbourly relations in the future.

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