

SUPERVISION OF CORRECTNESS OF APARTMENT OWNERS' RESOLUTIONS

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1. INTRODUCTION

The history of separate ownership of an apartment is relatively short because it was not until the 1930s that it was introduced to the Polish legal system.¹

The Act on the ownership of apartments² defines a community of apartment owners as all the owners whose apartments are part of a given real property and the establishment of the community results from the separation of ownership of the first apartment. The owner of a separate apartment has the right to a share in common real property, which is connected with the ownership right to this apartment. Common real property consists in the land and part of the building as well as the facilities that serve the exclusive use of apartment owners. An apartment owner's share in common real property corresponds to the relation of an apartment useable area together with an area of auxiliary premises to the useable area of all the apartments with their auxiliary premises.

An apartment community does not have a legal personality but the Act on ownership of apartments gives it the right to acquire rights and to enter into financial commitments as well as to sue and to be sued. From the point of view of civil law, an apartment community is at present classified as an organisational unit that is not a legal entity but one that is granted legal capacity by statute.³

The statute introduces an alternative division of apartment communities into what is called small communities in which the number of separated apartments

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¹ Regulation of the President of the Republic of Poland of 24 October 1934 on the ownership of apartments, Dz.U. of 1934, No. 94, item 848, as amended.

² Act of 24 June 1994 on the ownership of apartments, Dz.U. of 2018, item 716, hereinafter AOA.

³ Act of 23 April 1964: Civil Code, Dz.U. of 2018, item 1025, Article 331.

and those not separated and still belonging to the former owner does not exceed seven, and communities with the number of apartments exceeding seven. The management of small communities is subject to relevant provisions of the Civil Code and the Code of Civil Procedure⁴ concerning co-ownership. The common real property management takes place in the form of factual and legal activities performed by co-owners themselves, with no resolutions passed to give consent to those activities. In its resolution of 7 October 2009, the Supreme Court expressed an opinion that only a different mode of management determined in an agreement on establishing separate ownership of apartments or an agreement entered into later in the form of a notarised act makes it possible to determine the mode of management in accordance with statutory provisions, thus also to pass resolutions by the apartment owners.⁵

In communities composed of more than seven apartments, the mode of common real property management may be determined in an agreement between apartment owners; in particular, they can entrust management to a natural or legal person. In case there is no such an agreement, the provisions on common real estate management laid down in Chapter 4 AOA are in force. Then, apartment owners are obliged to pass a resolution on the selection of a single-person or many-person management that performs the standard management activities. In order to perform activities that go beyond the scope of standard management, apartment owners must pass a resolution giving consent to perform those activities and authorising the management to enter contracts consisting in activities going beyond the scope of standard management in the form laid down in law.

It should also be indicated that in literature and, in particular in case law, apartment owners' resolutions are commonly erroneously called resolutions of a real property community. Such a name might suggest that an apartment community is a body passing resolutions, while in fact passing resolutions is the exclusive right of apartment owners. An opinion that an apartment community meeting is a decision-making body of an apartment community is also erroneous because apartment owners can pass resolutions during the meeting as well as without convening it. The only body of an apartment community having the required rights is the apartment community management. However, the management body to which real property management has been entrusted in an agreement on establishing separated ownership of apartments or an agreement entered into later in the form of a notarised act does not have the features of an apartment community body. Thus, just the legal nature of an apartment community raises many controversies in the doctrine in the same way as the classification of incomplete legal persons.

The same discrepancies also occurred in case law and only the Supreme Court resolution of 21 December 2007,⁶ which has the power of a legal rule, ended them. In the resolution, the Supreme Court included an apartment community in the category of incomplete legal persons and granted it the right to acquire rights and obligations

⁴ Act of 17 November 1964: Code of Civil Procedure, Dz.U. of 2018, item 1360, hereinafter CCP.

⁵ The Supreme Court resolution of 7 October 2009, III CZP 60/09.

⁶ The Supreme Court resolution of 21 December 2007, III CZP 65/07.

to its own property. The Supreme Court Judge Krzysztof Pietrzykowski dissented from the resolution and is against the recognition of an apartment community as an incomplete legal person, and denies it the right to acquire the rights and obligations to its own property. It is right to indicate the doubts related with the lack of consistence in the justification of the resolution in which the Supreme Court classifies an apartment community as an entity subject to civil law and at the same time indicates that it is entitled to legal capacity limited to the rights and obligations exclusively connected with common real property management.

2. APARTMENT OWNERS' RESOLUTIONS

The term "resolution" does not have its legal definition. In the Supreme Court case law, the dominating opinion is that resolutions resulting in legal consequences should be recognised as civil law acts.⁷ In an apartment community, the apartment owners' consent that the management body undertakes activities going beyond the scope of standard management takes the form of a resolution.

An activity going beyond the scope of standard management is not defined, either. In general, it is assumed that an activity within the scope of standard management consists in dealing with current issues connected with normal use of a thing and maintaining it in a state not worsened as required by its current purpose. On the other hand, everything that is not included within this scope is classified as issues that go beyond the scope of standard management.⁸

In Article 22 para. 3 AOA, the legislator laid down the activities going beyond the scope of standard management as follows:

- 1) Establishment of the remuneration for a management body or a manager of common real property;
- 2) Adoption of an annual business plan;
- 3) Establishment of the amount of fees necessary to cover the cost of management;
- 4) Change of the purpose of parts of common real property;
- 5) Giving consent to build an extension to or rebuild common real property, the establishment of separate ownership of an apartment created as a result of building an extension to or rebuilding the real property and disposing of this apartment, and the change of shares resulting from the establishment of the separate ownership of an apartment built or rebuilt;
- 6) Giving consent to change the shares in co-ownership of common real property;
- 7) Division of common real property;
- 8) Acquisition of real property;
- 9) Joining two apartments constituting two separate parts of real property into single real property or dividing an apartment;

⁷ The Supreme Court judgment of 14 July 2006, II CSK 71/06.

⁸ E. Skowrońska-Bocian, K. Pietrzykowski (ed.), *Kodeks cywilny. Komentarz*, Vol. I, Warszawa 2018, p. 438.

10) Giving consent to divide land with more than one residential building and to change the shares in common real property as well as establishing shares in the newly created separate parts of common real property;

11) Taking legal action referred to in Article 16 of the statute, i.e. demanding that an apartment be sold by an auction if the apartment owner has long-term rent arrears or flagrantly or permanently violates the established domestic order, or makes the use of other apartments or the real property difficult due to their inappropriate conduct;

12) Establishing, in cases not regulated in legal provisions, some costs connected with the use of facilities or parts of the building serving the needs of particular apartment owners as well as to be used by at least two apartment owners, which are classified as costs of common real property management;

13) Determining the scope and method of extra-recordkeeping of the costs of common real estate management, advance payments to cover the costs and settlement of other payments for common real property by a management body or a manager.

The above catalogue of activities that go beyond the scope of standard management is not closed or exhaustive but only an example because the legislator preceded it with a phrase "in particular". However, it should be emphasised that the subject matter of an owners' resolution must concern issues connected with common real property management that do not go beyond the aims and tasks of an apartment community.⁹

The provision indicated above enumerates activities within the scope of common real property management that a management body performs on behalf of an apartment community by means of a declaration of intent with an effect on the owners of all apartments, thus in relation to all co-owners of common real property.¹⁰ Indeed, it is assumed that Article 22 para. 2 AOA is decisive in relation to activities going beyond the scope of standard management, which justifies the statement that every activity going beyond the scope of standard management performed on the basis of a resolution is effective in relation to all apartment owners, also those who have voted against the resolution or have not voted.¹¹ The requirement of apartment owners' unanimity in big apartment communities might lead to decision-taking obstruction because in practice it would be impossible to obtain consent from all members of an apartment community.¹²

In accordance with Article 23 para. 1 AOA, apartment owners' resolutions are passed either during a meeting or by means of their individual collection by a management body; however, a resolution may result partly from votes cast at the meeting and partly those collected individually. The results of voting are calculated in accordance with the size of shares, unless it has been decided in an agreement or a resolution passed in this mode that every owner has one vote in particular matters. Voting in accordance with the rule that every apartment owner has one vote must

⁹ R. Strzelczyk, A. Turlej, *Własność lokali. Komentarz*, 4th edn, Warszawa 2015, p. 569.

¹⁰ E. Bończak-Kucharczyk, *Własność lokali i wspólnota mieszkaniowa*, Warszawa 2016, p. 568.

¹¹ M. Balwicka-Szczyrba, *Zarząd majątkiem wspólnym. Komentarz*, Warszawa 2016, pp. 191–192.

¹² The Supreme Court judgment of 14 June 2017, IV CSK 478/16.

also be introduced at the request of apartment owners who have at least one-fifth of shares in common real property if the sum of shares in common property does not equal one or the majority of shares is owned by one owner or when both conditions are met jointly. A resolution is passed when most of apartment owners have voted in favour. Passing an effective resolution requires absolute majority of votes.

Every apartment owner should be notified in writing about the content of a resolution passed partly by means of individual votes collection.

3. TYPES OF DEFECTS IN APARTMENT OWNERS' RESOLUTIONS

Apartment owners' resolutions can be defective in terms of their content or aim, or the defects can be connected with factual circumstances that take place in the course of passing resolutions and they can concern the formal aspect of the process.

The legislator indicated four defects concerning the content or aim of an apartment owners' resolution in Article 25 para. 1 AOA. These are as follows:

- 1) Inconsistence with the provisions of law;
- 2) Inconsistence with an apartment owners' agreement;
- 3) Infringement of the principle of appropriate management of common real property;
- 4) Infringement of the interests of an apartment owner who files a complaint in another way.

Inconsistence with the provisions of law consists mainly in the infringement of the AOA and Civil Code provisions, the application of which within the scope of the statute is laid down in Article 1 para. 2 AOA. Incompliance with the provisions of law also means a collision of the content of a resolution with other legal activities and activity implementing them if the norms are absolutely binding. It also occurs when a resolution aims to avoid the law or is in conflict with the principles of social coexistence.¹³

Although it is not precisely determined in AOA, it should be assumed that a plea of inconsistency of a resolution with an apartment owners' agreement concerns an agreement determining the mode of a real property management referred to in Article 18 para. 1 AOA.¹⁴

It is not possible to examine the conditions for appropriate common real property management without reference to the current situation of a particular apartment community, but it can be assumed that a decision expressed in a resolution should meet the criteria of scrupulousness, purposefulness and thriftiness.

Scrupulousness is most often interpreted in accordance with a dictionary definition stating that it means "honesty, conscientiousness, reliability".¹⁵ Purposefulness means acting thoughtfully and in a way leading to an intended target from the point of view of the interest of an apartment community. The criterion of thriftiness

¹³ R. Strzelczyk, A. Turlej, *supra* n. 9, p. 637.

¹⁴ J. Pisuliński, [in:] E. Gniewek (ed.), *System Prawa Prywatnego*, Vol. 4, *Prawo rzeczowe*, Warszawa 2007, p. 313.

¹⁵ M. Szymczak (ed.), *Słownik języka polskiego*, Vol. III, Warszawa 1985, p. 161.

concerns optimal use of financial and material resources in the course of common real property management.

Formal defects of owners' resolutions are connected with the procedure of passing them. Most frequent infringements of this type include voting in the mode of collecting individual votes by unauthorised persons and formal errors connected with convening general meetings as well as notifying about the content of resolutions passed. According to the established case law, those infringements have a limited impact on the recognition of a resolution as defective because it is assumed that excessive formalism is not binding in apartment communities and it is necessary to be rational in order to ensure effective common real property management when assessing the procedure of passing resolutions. Thus, it is assumed that passing an apartment owners' resolution by collecting votes individually, conducted by unauthorised persons, may constitute grounds for a court to overrule it if the infringement might have influenced its content. On the other hand, failure to meet the statutory obligation to notify every owner about the content of a resolution passed in this mode does not have impact on its becoming effective.¹⁶

Inexistent resolutions constitute a category that is different from defective resolutions, due to their content or purpose, or from formally defective ones. It is not a statutory term but a concept used in the doctrine and also adopted in case law. At the same time, it is unanimously emphasised that this concerns especially grave infringements committed in the course of passing resolutions, therefore it is in fact hard to state whether apartment owners have expressed their intent. A resolution passed without the required majority vote can be an example of such a resolution.¹⁷ It should be emphasised that in the case of inexistent resolutions one cannot speak about their in compliance with law because such can be analysed only when a resolution exists.¹⁸

4. JUDICIAL SUPERVISION OF CORRECTNESS OF APARTMENT OWNERS' RESOLUTIONS

Substantive law as grounds for lodging an appeal against an apartment owners' resolution are laid down in Article 25 AOA. Legal action against an apartment community should be taken within six weeks from the date of passing a resolution at the general meeting or the date when a plaintiff was notified of the content of a resolution passed by individual collection of votes. Only an apartment owner or co-owner has the active procedural right to take legal action provided for under Article 25 AOA. A person who is not an owner, even if this person is a member of an apartment community management or a manager appointed based on a contract, cannot take legal action in this mode. A public prosecutor and the Ombudsman

¹⁶ The Supreme Court judgment of 8 July 2004, IV CK 543/03.

¹⁷ The Supreme Court judgment of 23 February 2006, I CK 336/05.

¹⁸ The Supreme Court judgment of 26 November 2010, IV CSK 269/10.

also have an active procedural right to take legal action based on Article 7 CCP.¹⁹ An apartment community represented by the management has a passive procedural right to appeal to a court to overrule a resolution.

Due to the fact that having closed the proceedings, a court issues a judgment taking into account the state of things at the moment of closing the proceedings (Article 316 § 1 CCP), a plaintiff must maintain their active procedural right throughout the whole course of the proceedings initiated by the appeal against a resolution until the proceedings are closed. If they sell an apartment in the course of the proceedings, they lose the status of apartment owners, thus they lose the interest that constitutes the grounds for appeal against a resolution because it no longer influences their rights and obligations. Such interest occurs only in case a resolution concerns property rights of an ex-owner in the period when they were still an apartment community member, it still regulated their legal situation and they had no other possibilities to protect their rights.²⁰

The time limit for taking legal action under Article 25 para. 1 AOA is final. However, adjudication practice in the case of a deadline imposed by the statute of repose varies. Most often, it is assumed that statutory specification of a time limit for appealing against a resolution results in the application of the statute of repose in relation to the grounds for an appeal, i.e. after the time limit it is inadmissible to quote further grounds for appeal that have not been reported.²¹ However, this approach is not uniform in case law and, according to another opinion, there are no grounds for ignoring successive grounds for appeal in order to justify effectiveness of an appeal to annul a resolution lodged in a statutory time limit.²²

The existence of the provision of Article 25 para. 1 AOA does not exclude a possibility of challenging the defectiveness of a particular resolution or resolutions of an apartment community under Article 189 CCP as the so-called inexistent legal action. In accordance with the provision, a plaintiff can demand that a court determine the existence or inexistence of a legal relationship or a right if they have legal interest in it. The legal interest within the meaning of Article 189 CCP is an objective category and occurs when the final judgment provides a plaintiff with the protection of their legal interests, i.e. when they definitely finish an existing dispute or prevent the occurrence of such a dispute in the future, and at the same time, the interest is not subject to protection by means of another measure.²³ Taking

¹⁹ Act of 15 July 1987 on the Ombudsman, Dz.U. of 2018, item 2179, Article 14(4).

²⁰ Compare the Supreme Court judgment of 7 February 2006, IV CSK 41/05, where it was stated that a former shareholder maintains the right to appeal against the resolution of the Annual General Meeting in a public limited company that concerns his/her corporate or property rights, but loses the right to appeal against resolutions that do not concern his/her rights. It is necessary to recognise a common element in the resolution of an apartment owners' community and the resolution of the AGM of a public limited company, which is the activity of a plaintiff taking legal action against the resolution for the benefit of an organisational unit he/she belongs to or in his/her own interest.

²¹ Judgment of the Court of Appeal in Kraków of 19 February 2004, I ACa 1297/03.

²² Judgment of the Court of Appeal in Gdańsk of 26 January 2009, I ACa 1169/08.

²³ Compare the Supreme Court judgments of 4 October 2001, I CKN 425/00; of 8 May 2000, V CKN 29/00; of 9 February 2012, III CSK 181/11; of 14 March 2012, II CSK 252/11; and of 19 September 2013, I CSK 727/12.

such legal action is neither subjectively nor temporally limited, i.e. such action can be taken at any time.

Legal action taken in order to determine inexistence of a resolution under Article 189 CCP aims to obtain a judgment stating that the resolution does not exist because it has not been passed, e.g. as a result of a lack of the required majority of votes.²⁴

Only exceptionally, is it admissible to take legal action in accordance with Article 58 Civil Code in conjunction with Article 189 CCP. It is because it is assumed that Article 25 AOA is special in nature in relation to the provision of Article 58 §§ 1 and 2 Civil Code. Thus, in the situation when an apartment owners' resolution is in conflict with law or the principles of social coexistence, Article 25 para. 1 AOA should constitute legal grounds for demanding its overruling as well as grounds for a judgment concerning a demand to overrule it.²⁵ This results from the legislator's intention to limit the possibility of challenging apartment owners' resolutions that are in conflict with law or their agreement by the introduction of a short final six weeks' time limit and the definite determination of entities that can take legal action. At the same time, there is no factual justification of the statement that legal action pursuant to Article 58 Civil Code in conjunction with Article 189 CCP cannot be taken in case a plaintiff has (or had) the right to take legal action pursuant to Article 25 AOA. It is the person that has the right to make claims who should have the right to decide about the choice of one of the claims they are entitled to.²⁶

In accordance with Article 17(42) CCP, cases concerning overruling, recognition of invalidity or determination of inexistence of resolutions of legal persons' bodies or organisational units that are not legal persons who are granted legal capacity by statute are under the jurisdiction of district courts. A court competent in terms of location is one that has jurisdiction over the district where common real property is situated because this real property, managed by an apartment community, corresponds to the legal person's head office.²⁷

A resolution appealed against is implemented, unless a court suspends its implementation until the proceedings concerning the overruling of a resolution are closed. It is unanimously assumed in literature that a court can rule suspension of the implementation of a resolution not only on a motion but also *ex officio*.²⁸

A statement of claim to overrule a resolution of an apartment community is subject to a fixed court fee of PLN 200.²⁹ A legal adviser's minimum remuneration for representation in a case concerning overruling of an apartment community's

²⁴ The Supreme Court judgment of 30 September 2015, I CSK 773/14.

²⁵ R. Dzięczek, *Własność lokali. Komentarz, Wzory pozwów i wniosków sądowych*, Warszawa 2016, p. 188.

²⁶ K. Osajda (ed.), *Ustawa o własności lokali. Komentarz*, 5th edn, <http://www.legalis.pl> (accessed 11.3.2019).

²⁷ M. Nazar, *Własność lokali. Podstawowe zagadnienia cywilnoprawne*, Lublin 1995, p. 88.

²⁸ P. Pelczyński, *Zaskarżenie uchwał wspólnoty mieszkaniowej na gruncie ustawy o własności lokali*, Rejent No. 6, 2000, p. 119.

²⁹ Act of 28 July 2005 on court proceeding costs in civil law cases, Dz.U. of 2018, item 300, Article 27(9).

resolution is PLN 380.³⁰ A solicitor's minimum remuneration is the same amount.³¹ In case one statement of claim concerns overruling of a few resolutions passed by the sued apartment community, the cost of procedural representation is based on the minimum charge, regardless of the number of resolutions appealed against.³² The fees do not depend on the value of the object of dispute.

Apartment owners' resolutions may concern property rights of a community or an apartment owner or owners or their non-property rights. There is an established opinion in the Supreme Court case law that the subject matter of the challenged resolution is decisive for the assessment whether a case concerning overruling or determination of inexistence of a resolution of apartment owners is one concerning property rights or non-property rights.³³

A case concerning overruling of an apartment owners' resolution can be subject to cassation if it concerns non-property rights, and in the cases concerning property rights when the value of the object of dispute is not lower than PLN 50,000.

5. CIVIL LAW SANCTIONS FOR DEFECTIVE RESOLUTIONS PASSED BY APARTMENT OWNERS

It is assumed that there is a sanction of absolute or relative invalidity in relation to resolutions of apartment owners. A sanction of absolute invalidity is the civil law sanction in the precise sense, and in general it means that a legal action does not result in the expected legal effects.³⁴ Absolute invalidity takes place *ex lege*, is recognised by a court *ex officio* and a court judgment issued is declarative in nature, i.e. it confirms a particular state of things.

The AOA provisions do not stipulate a sanction of absolute invalidity but only a right to appeal (relative invalidity) against apartment owners' resolutions, and only as a result of a court's constitutive judgment. The moment a judgment becomes final, a constitutive nature of the judgment overruling a resolution of apartment owners results in the overruling of the resolution *ex tunc*, i.e. as if the resolution had never been passed.³⁵

At present, admissibility of overruling some parts of a resolution of apartment owners does not raise controversy. Pursuant to the provisions of the Commercial Companies Code, the Supreme Court stated that it is admissible to overrule some parts of a resolution of a general meeting of shareholders when the challenged part is autonomous and its content is not connected with the remaining decisions

³⁰ Regulation of the Minister of Justice of 22 October 2015 on fees for activities performed by legal advisers, Dz.U. of 2018, item 265, § 8(1.1).

³¹ Regulation of the Minister of Justice of 22 October 2015 on fees for activities performed by solicitors, Dz.U. of 2015, item 1800, § 8(1.1).

³² The Supreme Court resolution of 25 June 2009, III CZP 40/09.

³³ The Supreme Court ruling of 27 February 2001, V CZ 4/01.

³⁴ A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 1998, p. 328.

³⁵ M. Gutowski, *Wzruszalność czynności prawnej*, Warszawa 2010, p. 236.

of the resolution.³⁶ The issue was regulated in Article 58 § 3 Civil Code, which is applicable based on Article 1 para. 2 AOA. A resolution of apartment owners can also be overruled in the part in which the decisions do not comply with law, unless the content of the resolution or circumstances indicate that the resolution with no defective decisions would not have been passed at all.³⁷

It should also be emphasised that the AOA provisions do not stipulate that a court can oblige apartment owners to pass a resolution with a particular content.³⁸ However, a management body or a manager can request a court to give consent to perform an activity going beyond the scope of standard management in case there is no consent of the majority of apartment owners. Proceedings before a court are initiated in a non-trial mode and all the apartment owners should be participants of the proceedings. A court adjudicates taking into account the objective of the planned activity and the interests of all the owners.

6. CONCLUSIONS

A court supervises the correctness of the content of or the procedure of passing a resolution by apartment owners in the course of judicial proceedings initiated as a result of legal action taken by an apartment owner. Depending on the type of sanction imposed on a defective resolution, an apartment owner has a choice of lodging a claim to overrule the resolution or to determine invalidity or inexistence of the resolution. The adopted principle that even a resolution appealed against should be implemented if a court does not suspend its implementation until the adjudication of a case protects an apartment community against misuse of the right to appeal against resolutions. At the same time, an apartment owner has sufficient legal measures to efficiently eliminate a defective resolution of apartment owners from legal transactions or obtain a judgment stating its invalidity or inexistence.

It should be noted that apartment owners not only have the right but also an obligation to cooperate in the area of management of common real property. Thus, particular interests of individual owners must be limited to some extent for the common benefit of all the apartment owners. It is justified by subjective and temporary limitation of the right to appeal against the resolutions that are only subject to a sanction of being challenged. Regardless of the statement of claim regulated in Article 25 AOA, an apartment owner, as well as any other entity, can take legal action to determine invalidity of a resolution based on Article 189m CCP in conjunction with Article 58 Civil Code. However, the necessity to prove a legal interest to take such action sufficiently prevents the abuse of the right.

Two fundamental rights of apartment owners: the right to pass resolutions and the right to appeal to a court against them regulate internal relationships in an apartment owners' community that give apartment owners a guarantee of certain, stable, legal and rational common real property management.

³⁶ The Supreme Court judgment of 13 May 2004, V CK 452/03.

³⁷ Judgment of the Court of Appeal in Warsaw of 23 May 2014, I ACa 1757/13.

³⁸ The Supreme Court judgment of 7 February 2002, I CKN 489/00.

BIBLIOGRAPHY

- Balwicka-Szczyrba M., *Zarząd majątkiem wspólnym. Komentarz*, Warszawa 2016.
- Bończak-Kucharczyk E., *Własność lokali i wspólnota mieszkaniowa*, Warszawa 2016.
- Dziczek R., *Własność lokali. Komentarz. Wzory pozwów i wniosków sądowych*, Warszawa 2016.
- Gutowski M., *Wzruszalność czynności prawnej*, Warszawa 2010.
- Nazar M., *Własność lokali. Podstawowe zagadnienia cywilnoprawne*, Lublin 1995.
- Osajda K. (ed.), *Ustawa o własności lokali. Komentarz*, 5th edn, <http://www.legalis.pl> (accessed 11.3.2019).
- Pełczyński P., *Zaskarżenie uchwał wspólnoty mieszkaniowej na gruncie ustawy o własności lokali*, Rejent No. 6, 2000.
- Pisuliński J., [in:] Gniewek E. (ed.), *System Prawa Prywatnego*, Vol. 4, *Prawo rzeczowe*, Warszawa 2007.
- Skowrońska-Bocian E., Pietrzykowski K. (eds), *Kodeks cywilny. Komentarz*, Vol. I, Warszawa 2018.
- Strzelczyk R., Turlej A., *Własność lokali. Komentarz*, 4th edn, Warszawa 2015.
- Szymczak M. (ed.), *Słownik języka polskiego*, Vol. III, Warszawa 1985.
- Wolter A., Ignatowicz J., Stefaniuk K., *Prawo cywilne. Zarys części ogólnej*, Warszawa 1998.

SUPERVISION OF CORRECTNESS OF APARTMENT OWNERS' RESOLUTIONS

Summary

The article presents the issue of control of apartment owners' resolutions in terms of their correctness. In the author's opinion, the presently binding legal regulations guarantee apartment owners reliable, stable, legal and rational management of their common real property. In the most important matters that are beyond the standard management, there is a statutory obligation to adopt a resolution by the majority vote of apartment owners. Each owner is entitled to appeal against such resolution due to its non-compliance with the provisions of law or the owners' agreement, or if it breaches the principles of appropriate common real property management, or infringes the owners' interests. These statutory safeguards constitute sufficient protection against activities undertaken by the managing body that are in conflict with the interests of most owners or to the detriment of any of the owners.

Keywords: apartment ownership, owners' resolution, appeal, overruling, annulment, inexistence of the resolution

KONTROLA PRAWIDŁOWOŚCI UCHWAŁ WŁAŚCICIELI LOKALI

Streszczenie

W artykule przedstawiono problematykę kontroli prawidłowości uchwał właścicieli lokali. Zdaniem autora obecnie obowiązujące uregulowania prawne gwarantują właścicielom lokali pewne, stabilne, legalne i racjonalne zarządzanie nieruchomością wspólną. W najważniejszych sprawach wspólnot mieszkaniowych, stanowiących czynności przekraczające zakres zwykłego zarządu, obowiązuje ustawowy obowiązek podjęcia uchwały większością głosów właścicieli lokali. Każdy

z właścicieli jest uprawniony do jej zaskarżenia ze względu na niezgodność z przepisami prawa lub z umową właścicieli, albo jeśli narusza ona zasady prawidłowego zarządzania nieruchomością wspólną lub w inny sposób narusza interesy każdego. Te ustawowe gwarancje stanowią dostateczne zabezpieczenie przed podjęciem przez zarząd wspólnoty czynności sprzecznych z interesem większości właścicieli lub z pokrzywdzeniem któregoś z właścicieli.

Słowa kluczowe: własność lokali, uchwała właścicieli, zaskarżenie, uchylenie, unieważnienie, nieistnienie uchwały

EL CONTROL DE LA REGULARIDAD DE LOS ACUERDOS DE PROPIETARIOS DE LOCALES

Resumen

El artículo presenta la problemática del control de la regularidad de los acuerdos de propietarios de locales. Según el autor, la regulación vigente garantiza a los propietarios de locales la gestión segura, estable, legal y racional del inmueble común. En los asuntos más importantes para la comunidad de vecinos que excedan la gestión corriente, existe la obligación legal de adoptar acuerdo mediante la mayoría de votos de propietarios de locales. Cada propietario está legitimado a impugnar el acuerdo debido a infracción de la ley o del contrato entre propietarios o bien cuando infrinja las reglas de gestión correcta del inmueble común o de otra forma infrinja intereses de cada uno. Estas garantías legales protegen suficientemente ante la adopción de acuerdo contrario a los intereses de la mayoría de propietarios o de acuerdo que perjudique a cualquier propietario.

Palabras claves: propiedad de locales, acuerdo de propietarios, impugnación, nulidad, anulabilidad, inexistencia de acuerdo

КОНТРОЛЬ ЗА ПРАВОМЕРНОСТЬЮ РЕЗОЛЮЦИЙ ПРИНИМАЕМЫХ ТОВАРИЩЕСТВАМИ СОБСТВЕННИКОВ

Резюме

В статье рассмотрена проблематика контроля за правомерностью резолюций, принимаемых товариществами собственников. По мнению автора, действующие правовые нормы предоставляют собственникам помещений все возможности для надежного, стабильного, основанного на законе и рационального управления общей собственностью. Согласно законодательству, по наиболее важным вопросам, находящимся в ведении товарищества собственников и выходящим за рамки повседневного управления, требуется принятие резолюции большинством голосов собственников помещений. Каждый из собственников имеет право оспорить такую резолюцию по причине ее несоответствия законодательству или уставу товарищества собственников, а также в случае, если она нарушает принципы правомерного управления общей собственностью либо иным образом ущемляет интересы собственника. Эти законодательные гарантии обеспечивают достаточную защиту от таких действий правления товариществ, которые противоречат интересам большинства собственников либо нарушают интересы любого из собственников.

Ключевые слова: право собственности на помещение, резолюция товарищества собственников, обжалование, отмена, аннулирование, отсутствие резолюции

ÜBERPRÜFUNG DER RICHTIGKEIT DER BESCHLÜSSE DER EIGENTÜMER DER GESCHÄFTSRÄUME

Zusammenfassung

Der Artikel befasst sich mit der Überprüfung der Richtigkeit der Beschlüsse von Eigentümern der Geschäftsräume. Nach Angaben des Autors garantieren die derzeit verbindlichen gesetzlichen Bestimmungen den Eigentümern von Geschäftsräumen eine zuverlässige, stabile, rechtliche und rationelle Verwaltung des gemeinsamen Eigentums. In den wichtigsten Angelegenheiten der Wohngemeinschaften, die Tätigkeiten darstellen, welche über die Rahmen der normalen Verwaltung hinausgehen, besteht die gesetzliche Verpflichtung, einen Beschluss zu fassen mit der Mehrheit der Stimmen der Eigentümer der Räumlichkeiten. Jeder Eigentümer hat das Recht, gegen den Beschluss eine Berufung einzulegen, wenn es gegen das Gesetz oder die Vereinbarung des Eigentümers verstößt oder wenn es gegen die Grundsätze der ordnungsgemäßen Verwaltung des gemeinsamen Eigentums verstößt oder auf andere Weise die Interessen eines jeden verletzt. Diese gesetzlichen Garantien bieten einen ausreichenden Schutz gegen Maßnahmen des Verwaltungsrates, die den Interessen der meisten Eigentümer zuwiderlaufen oder den Eigentümern Schaden zufügen.

Schlüsselwörter: Eigentum an Geschäftsräume, Beschluss der Eigentümer, Berufung, Aufhebung, Kündigung, Nichtvorhandensein des Beschlusses

VÉRIFICATION DE L'EXACTITUDE DES RÉOLUTIONS DES PROPRIÉTAIRES DE LOCAUX

Résumé

L'article présente la question de la vérification de l'exactitude des résolutions des propriétaires de locaux. Selon l'auteur, les dispositions légales actuellement contraignantes garantissent aux propriétaires de locaux une gestion fiable, stable, légale et rationnelle des biens communs. Dans les questions les plus importantes des communautés de logement, constituant des activités dépassant le cadre de la gestion ordinaire, il existe une obligation légale de voter une résolution par la majorité des propriétaires de locaux. Chacun des propriétaires a le droit d'attaquer une résolution en raison du non-respect de la loi ou de l'accord des propriétaires, ou si elle viole les principes de bonne gestion du bien commun ou viole d'une autre manière les intérêts de chacun. Ces garanties légales assurent une protection suffisante contre toute action du conseil d'administration contraire aux intérêts de la majorité des propriétaires ou portant atteinte à l'un des propriétaires.

Mots-clés: propriété des locaux, résolution des propriétaires, recours, dérogation, annulation, inexistence de la résolution

CONTROLLO DELLA VALIDITÀ DELLE DELIBERE DEI CONDOMINI DEI LOCALI

Sintesi

Nell'articolo è stata presentata la problematica del controllo della validità delle delibere dei condomini dei locali. Secondo l'autore le norme giuridiche attualmente in vigore garantiscono ai proprietari dei locali una sicura, stabile, legale e razionale gestione delle parti comuni degli immobili. Nelle questioni più importanti della gestione condominiale, consistenti in atti eccedenti i limiti dell'ordinaria amministrazione, vige l'obbligo di legge di assumere una delibera con la maggioranza dei voti dei condomini dei locali. Ogni condomino ha il diritto di impugnarla a motivo della non conformità alle norme di legge o al contratto dei proprietari oppure se viola i principi di corretta gestione delle parti comuni degli immobili o in altro modo viola gli interessi di ognuno. Queste garanzie di legge costituiscono una sufficiente tutela contro il compimento, da parte degli amministratori del condominio, di atti contrari all'interesse della maggior parte dei condomini o lesivi nei confronti di uno dei condomini.

Parole chiave: proprietà dei locali, delibera dei condomini, impugnazione, abrogazione, annullamento, inesistenza della delibera

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