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# Legal Status of Housing Communities in Poland

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The number of housing communities in Poland is on the rise as they have a property right known as "separate ownership of the premises". Housing communities are now an important alternative to the still popular housing cooperatives. Housing cooperatives have many legal orders, and their legal status varies. Polish housing communities do not have legal personality, which raises questions about their legal status. The author of this article explains about the legal regulations around housing communities, analyses the contents of the Polish legal doctrine, and reviews important judgments regarding the legal character of housing communities. In conclusion, the author recognizes Polish housing communities as "defective legal persons", i.e., they are subject to rights that are independent of those of the owners of premises and therefore have legal capacity. In this respect, the Polish model bears similarity to the model adopted in the German legal system.

### **Keywords**

Housing community; Polish housing community; Housing law, Polish law

## **1. Introduction**

The housing system in Poland currently comprises mainly cooperative apartments and ownership of premises. This is due to historical conditions because cooperative housing was offered after World War II, which prevented the development of private property. It was only after the legal act that regulates governance over housing communities was passed, that is, the Act of 24 June 1994 on the Ownership of Premises (hereinafter the Act; Baker and Fenn (2005)), that numerous housing communities started to be constructed after 1 January 1995. The right to separate ownership of property has more weight in comparison to the collective ownership of housing cooperatives. A specific feature of the Polish regulation is the distinction of two types of housing communities - small, which is up to three premises, and large, with more than three premises. This distinction has a significant impact on the way that housing communities are managed. The provisions provide for a different management regime for each type of community (Sikorska-Lewandowska, 2017). The housing community in a building is established by law where there are separate premises, and constitutes as an association of the owners of these premises.

The legal regulation of housing communities is a novelty in Polish law because housing communities are not given legal personality. Pursuant to Article 6 of the Act, all owners whose premises are a part of a certain real property, comprise a housing community. A housing community may acquire rights and incur obligations, sue and be sued. This legal regulation shows that housing communities have legal capacity, and thus the ability to act in civil law transactions, and so they can acquire property. Housing communities in Poland have also been given the liberty of appearing in court. This article will clarify the stances presented in the Polish legal doctrine on the legal character of housing communities. Then, an analysis of the impact of the changes in the legal regulations on the legal status of housing communities will be made. Following this, important judgments on this subject will be explained. In the final part, conclusions on the legal status of Polish housing communities will be presented.

## **2. Stance of Polish Legal Doctrine**

Polish civil law currently differentiates among three types of persons: natural (humans), legal and statutory persons. Housing cooperatives are legal entities based on the Act, so there is no doubt of their legal status. Having a legal personality means that the entity is separate from its members, i.e., in this case, the owners of the premises. As for statutory persons, this is an intermediate category, which is closer to legal persons, and assumes that a specific group of persons are a separate entity.

In connection with this legal regulation, the issuance of a legal status to housing communities is a topic of the Polish legal doctrine. The presented views are characterized with a significant discrepancy - from recognition of the housing communities as an organizational unit with legal capacity (Gniewek 1995, Ignatowicz 1995, Skąpski 1996) which is the status of a defective legal person (a statutory person; Frąckowiak (2007), to the acceptance that housing communities are synonymous to the legal relationship in joint ownership (Nazar, 2000, Naworski 2002, Pisuliński 2007).

First, it is necessary to determine whether housing communities can be considered as an "organizational unit". In this respect, there has been consensus. Some representatives of the legal doctrine have rejected giving this attribute to the housing communities, and defined the term as a "mental short-cut" (Naworski, 2002); that is, the assumption that the goal of housing communities – which is exclusively administrative - determines only legal bonds among the co-owners (Gutowski, 2009). Opponents of granting the status of a defective legal person to housing communities indicate that these communities are not a separate organizational unit, and that their interests do not differ from those of co-owners (Naworski 2002, Pisuliński 2007, Bielski 2007). The premise that there are no grounds for granting legal capacity to housing communities is explained by the non-existence of such rights and obligations related to the management of communal areas that would justify the introduction of such rights and obligations that are independent of the co-owners themselves (Bielski, 2007). Owing to the fact that housing communities can acquire property and act in trade on their own behalf or on behalf of the co-owners, the view that has been voiced is that housing communities can acquire property, not for themselves, but for all of the co-owners (Bieniek and Marmaj 2007). Recognizing housing communities as only joint ownership is a legal structure that makes it difficult for the members to function, as it leads to the assumption that each owner of the premises is a party to each contract and bears personal responsibility for the contract. A change in owner(s) of only one premise results in the need to draw up an annex for each real estate contract (e.g. contract for water or energy supply) so that they are included in the contract. Large buildings, for example, those with a hundred apartments, would require that the hundred owners or more would have to sign a contract. This would require a long time and is also confusing.

Advocates of including housing communities in the third category of legal entities, which is called a defective legal entity, indicate that housing communities become involved in legal transactions on their own behalf and have their own assets, which are separate from the assets of their members. Therefore, housing communities are perceived as a legal entity that is separate from the members, with the role to maintain the property so that it is in good condition, which is not only in the interest of every landlord, but also the owners of neighbouring buildings and the local community (Frąckowiak, 2007). From a practical viewpoint, this legal construction is definitely more beneficial for the owners of premises, because it differentiates housing communities from

their members. In a situation where there can be many premises, the legal stance prevents problems associated with ownership changes. This means that changes in the owners of premises would not have a negative impact on the day-to-day operations of the housing communities and property management. Contracts are concluded by the board of directors on behalf of a housing community as the whole owner, and not on behalf of all individually named owners. Also, payment for utilities (water, electricity, and waste disposal) is made from common funds.

### 3. Amendment to the 2003 Civil Code of Poland

An amendment was made to the Polish Civil Code on September 25, 2003, which introduced an article<sup>1</sup> of great importance<sup>2</sup>. This article considers the legal status of housing communities. Pursuant to this regulation, organizational units that are not legal persons, and to whom the Act grants legal capacity, are subject to the provisions that concern legal persons. Prior to the amendment, the Polish legal regulations had two categories of legal entities: natural and legal persons. Despite this, the doctrine points to the presence of a third category of legal entities, which has been referred to as "defective legal persons", and the terms "statutory person" (Frąckowiak, 2005) and "statutory entity" have also been created (Kidyba, 2004). There has been controversy as to whether the amendment has eliminated the dichotomic division of civil law entities of natural and legal persons, as some scholars claim (Frąckowiak 2012, Kidyba 2012), or has not abolished this dichotomy, because a provision in Article 1 of the Civil Code, which regulates civil law relations between natural persons and legal entities, was not changed (Pietrzykowski, 2015). The fact is that from this date onward, a third category of entities is defined in Polish law. The content of the justification<sup>3</sup> for the draft law that amended the Polish Civil Code leaves no doubt of the intention of those who proposed the amendment that housing communities fall into the category of entities included in a provision in Article 33<sup>1</sup> of the Civil Code, so they are a defective legal person.

A regulation in Article 33<sup>1</sup> of the Civil Code requires two conditions to be met: to be an organizational unit and legal capacity (granted to the organizational unit) by means of the Act (Pazdan 2015, Frąckowiak 2012, Kidyba 2012). Some scholars reject the status of housing communities as an organizational unit (Gutowski, 2009), and claim that housing communities do not show proper organization and do not have their own interests that are independent from the interests of the co-owners. As a result, housing communities are only an

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<sup>1</sup> The Act of February 14, 2003 amending the Act - Civil Code and some other acts (Journal of Laws of 2003, No. 49, item 408).

<sup>2</sup> The Act of April 23, 1964 - Civil Code, consolidated text: Journal of Laws of 2018, item 1025, as amended.

<sup>3</sup> Justification of the draft of the government act on amending the act - Civil Code and some other acts, Sejm print No . 666.

obligation bond. However, other views point to the fact that an organizational unit is a structure that can be differentiated from its participants, a fact which undoubtedly characterizes housing communities (Malinowska-Woźniak, 2016). The intention of the legislator was to provide groups of owners of premises with a certain degree of organizational stability, independence, and differentiation from the individual owners of premises (Ignatowicz, 1995). Owners of premises are separate legal entities, and jointly, as a whole, they form housing communities. This is a fairly clear construction and appears in other legal regimes. This separateness has essence because it allows housing communities to appear independently in legal transactions.

#### 4. Stance of the Judicature

In the face of various court cases on housing communities, judicial authorities sometimes have to take a position on their legal status. In case-law, housing communities are often accepted as a defective legal person, although the views presented are not the same<sup>4</sup>. In connection with the above-mentioned doctrinal disputes and adjudication discrepancies, the resolution given by a panel of seven judges of the Supreme Court on December 21, 2007, III CZP 65/07, was adopted<sup>5</sup>, which is conferred a legal principle, and stipulated that housing communities are an organizational unit that is a defective legal person, and, therefore, has legal capacity, but no legal personality. Note that objections were expressed against this resolution<sup>6</sup>, which shows the lack of consensus among the adjudication panel. As indicated in the glosses and other publications that appeared after the resolution was issued, there is still the absence of full acceptance in the doctrine (Pyrzyńska 2010, Katner 2009) of the stance presented by the Supreme Court as to the ownership of a defective legal entity, and the ability of housing communities to have rights and obligations over their own property, the limitations of the legal capacity of housing communities, and recognizing housing communities as an organizational unit (Królikowska 2008, Gorczyński 2008, Gutowski 2009, Bielski 2007). The adoption of this resolution by the Supreme Court set out an interpretative direction, which considered that housing communities are a legal entity independent of the apartment owners.

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<sup>4</sup> Housing communities were recognized as a defective legal personality in the decision of the Supreme Court of 10 December 2004, III CK 55/04, OSNC 2005, No. 12, item 212, and in resolutions of the Supreme Court: of 23 September, 2004, III CZP 48/04, OSNC 2005, No. 9, item 135; of 28 February, 2006, III CZP 5/06, OSNC 2007, No. 1, item 6; and of 24 November 2006, III CZP 97/06, Monitor Prawniczy 2007, No. 1 p. 3 - whereby it was recognized in the last decision that housing communities acquire property for all of the owners of the premises, and not for themselves.

<sup>5</sup> Resolution of the Supreme Court (7), III CZP 65/07, OSNC 2008 Nos. 7-8, item 69.

<sup>6</sup> A dissenting opinion of a judge of the Supreme Court, Krzysztof Pietrzykowski, against the resolution of seven judges of the Supreme Court of 21 December, 2007, III CZP 65/07, OSNC 2008 Nos. 7-8, item 69.

An analysis of the judgments passed since 2008 shows that in the judicature, the view that grants legal capacity to housing communities is fixed and definitive. The courts of appeal ruled as to the position<sup>7</sup> of housing communities, defining them in principle, as the location of communal areas. The courts specified that a party to a loan agreement<sup>8</sup> is always the housing community, not the co-owners of communal areas. It was assumed that the housing communities as a legal entity decide independently on the allocation of funds accumulated in the repair and renovation funds<sup>9</sup>. In recent judgments, housing communities are directly acknowledged as a defective legal person<sup>10</sup> or are called a "statutory person"<sup>11</sup>.

Also, the literature predominantly accepts the legal personality of housing communities (Zięba, 2016, Górczyński 2009, Dzięczek 2012), despite some critical comments on the Supreme Court resolution, SN III CZP 65/07. The prevailing view is that despite the objections raised against this resolution, it should be honoured in practice in the interest of the safety of legal transactions and the stability of legal relations (Bieniek and Rudnicki 2009).

## 5. Housing Communities as a Defective Legal Person

The consequence of recognizing that housing communities have a legal personality is to acknowledge that they have their own assets and bear civil law liability. The properties of the communities include advances made by co-owners to cover the costs of managing communal areas, and property acquired by the communities for the funds held, as well as obtained loans and other forms of external financing (Zięba 2013). The properties belong to the housing communities as separate entities, and not to the owners of the premises. The civil law liability of housing communities is subsumed in Article 17 of the Act, according to which the entire housing community is liable for all of the obligations of the communal areas without limitations, and each owner of the premises of the part that corresponds to his/her/its share in the property. As indicated in the comments, obligations of communal areas may concern both contractual liability and liability for torts (Turlej and Strzelczyk 2015, Szymczak 2013). Thus, the housing communities themselves are responsible

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<sup>7</sup> Resolution of the Court of Appeal in Katowice of 28 February 2012, I ACz 1128/11, LEX No. 1162604.

<sup>8</sup> Judgment of the Court of Appeal in Lublin of 5 June 2013, I ACa 106/13, LEX No. 1353786.

<sup>9</sup> Judgment of the Supreme Court of 26 January 2011, II CSK 358/10, OSNC 2011 issue 11, item 124.

<sup>10</sup> Judgment of the Supreme Court of 8 October 2015, III CZP 57/15, OSNC 2016 No. 10 item 112; Judgment of the Court of Appeal in Katowice of 8 November, 2012, V ACa 497/12, LEX No. 1236657.

<sup>11</sup> Judgment of the Court of Appeal in Katowice of 26 June 2008, I ACa 196/08, LEX No. 447159.

for the debts of their own property, and if there is no such property, only then are the owners of the premises responsible for the property, but only for the part that corresponds to their share in the joint ownership.

The arguments of the proponents of recognizing housing communities as legal entities within the parameters of Article 33<sup>1</sup> of the Civil Code indicate that the so-called defective legal entities, i.e. organizational units that have no legal personality thus far, have obtained, on the principle of treatment equal to regular legal persons, the actual legal status of legal persons (Piasecki 2003). As a result of communities having legal capacity, they also have capacity to perform acts in law, to be a party in court proceedings, and to perform actions in court proceedings (Gniewek 1995, Turlej and Strzelczyk 2015, Bończak-Kucharczyk 2016, Dżiczek 2012, Zięba 2016). The essence of housing communities, as an entity that is separate from its members, is that they are formed by the current owners of the premises, whereby any individual changes amongst the owners do not affect in any way the procedural position of the housing community or legal transactions made by housing community.

A result of acknowledging housing communities as a defective legal person is the necessity of properly applying the provisions that are applicable to legal persons to them. The provisions on acting by bodies and the liability of persons acting as the body of a legal person, but not being their body, or exceeding their power, apply to the activities of the housing communities which are represented by management boards (Dżiczek 2012). This arises from the provision in Article 33<sup>1</sup> of the Civil Code that it is a matter of reference, which refers to all provisions that apply to legal persons in general. Such a legislative solution makes it possible for case law, supported by the doctrine, to clarify the regulation of the legal situation of statutory persons, by considering to what extent, in a specific case, that the provisions on legal persons can be applied to housing communities (Frąckowiak 2012).

Polish housing communities are associations of the owners of premises, which, by virtue of the provisions of the Act, have a legal existence that is independent of that of the owners. As such, the subjective change on the part of the owners of premises does not affect the legal status of the housing communities themselves, as they are defined by the address of the real property, not by the surnames or names of the owners of the premises. The legislator has provided housing communities with essential attributes that determine their legal personality: legal capacity and the capacity to be a party in civil proceedings. As a result, they can acquire property in their own name and also bear civil liability for obligations. Despite the fact that they are not legal persons, they are entitled to the attributes of a defective legal person, through which they are themselves legal entities in transactions. This is a beneficial solution for the owners of premises, because as such, they do not bear the primary responsibility for the liabilities incurred by the housing communities. There are also many practical benefits: not all of the owners have to participate in the conclusion of contracts for the supply of utilities, or incur other obligations on behalf of the

housing communities. At the same time, changes in the owners of the premises do not cause any problems, since the housing communities are the party to the contract, and not the owners of the premises.

This solution is also beneficial for third parties who conclude contracts with housing communities. This applies to both contractors and public administration bodies in the event of administrative proceedings. The letters are addressed to the housing community, and not to each owner of the premises, which can be a very large number. In this case, the management of a housing community can take action on behalf of the entire community, and therefore the owners in general. In Poland, there are large communities that can have more than 300 premises and as such, it would be difficult to act in a situation in which each owner would have to actively participate in all matters.

In comparing the Polish solution with those used in other legal systems, the former significantly differs from the predominant model used in the latter because the housing community has been mostly considered as a legal person. For instance, the commonhold associations in Britain have legal personality to which company law applies<sup>12</sup> which concerns one of the two forms of a limited liability company found in their legal system - a company limited by guarantee. The owners of the premises are the shareholders of the company, while the housing community is the owner of common property (Gray and Gray 2011). The commonhold system of home ownership is found in England and Wales, but in its assumptions, it is similar to an ownership system called "strata title" found in Australia, New Zealand, and Singapore (Baker and Fenn 2005)<sup>13</sup>. In South Africa, housing communities have full legal capacity as a legal entity, but are not a company (Van der Merve and Habdas 2006), and the provisions of the Sectional Titles Act of 1986 apply<sup>14</sup>. Similarly, since April 1, 2005 in Singapore, the Building Maintenance and Strata Management Act 2004 is applicable<sup>15</sup>, according to which housing communities are a legal person but not subject to company law (Sood 2008). Also in the Scottish legal system, housing communities are a *sui generis* legal entity (Lu 2010).

In Germany, the Law on Apartment Ownership and Long-term Residential Rights enacted on March 15, 1951 has been amended multiple times and applies to the ownership of flats and the permanent right to housing<sup>16</sup>. In the German legal system, housing communities are not a legal person but have legal capacity, just like the Polish housing communities. They are given limited (partial) legal capacity, and their role is limited to managing common property. The owners of the premises, who have a certain share, are co-owners of the

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<sup>12</sup> Companies Act 2006, ustawa o spółkach z dnia 8 listopada 2006 r.

<sup>13</sup> C. Baker, *Commonhold*, London 2005, p. 4

<sup>14</sup> Act 95 of 1986.

<sup>15</sup> Building Maintenance and Strata Management Act (BMSMA) Act 47 of 2004.

<sup>16</sup> *Gesetz über das Wohnungseigentum und das Dauerwohnrecht*, BGBl. I S. 175, as amended.

common property, and the housing communities may acquire rights and incur obligations on their own behalf and own account. In Austria, there is the current Law on Apartment Ownership of April 26, 2002<sup>17</sup> which is the third generation of the original act that regulates issues related to the ownership of premises. Their housing communities are given legal personality, but the scope has been limited in the Law on Apartment Ownership in such a way that their legal personality is restricted to only rights and obligations that are functionally related to the management of common property.

The Polish solution, according to which housing communities are not given legal personality, but have legal capacity, is therefore similar to that which is found in the German law. The adoption of such a solution should be considered well chosen, as it has positive effects on local communities. The system ensures self-governance within housing communities, allowing the owners of premises to make important decisions regarding their property, including the acceptance of loans for renovating buildings. At the same time, the system does not excessively burden the owners with current problems, leaving them in the hands of the owner-elected board. The popularity of housing associations in Poland is ever rising, and the adopted solution, which grants them legal separation from the owners of premises, contributes to their advancement.

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<sup>17</sup> *European Condominium Law*, edited by Cornelius Van Der Merwe, page 31, *Bundesgesetz über das Wohnungseigentum (BGBI of 2002, item 70 as amended)*.

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