

AMENDMENT TO CIVIL CODE SET TO HAVE MAJOR IMPACT ON FLAT (CO)OWNERSHIP

The Czech Ministry for Regional Development presented to the Chamber of Deputies an amendment to Act No. 89/2012, the Civil Code (the “**Amendment**”), amending especially the provisions of the Civil Code (“**Civil Code**”) concerning flat (co)ownership.

The explanatory report states that the Amendment focuses mainly on modifying the provisions of the Civil Code that have proven to be problematic in interpretation as well as impossible to apply in practice. The Amendment introduces changes such as the following:

- simplifies processes for accepting changes in declarations
- states that articles of association will now be enacted as a separate document, not as part of a declaration or construction agreement.
- clarifies the scope of unit owners’ rights – owners will have the right and obligation to manage their flat in the scope required to maintain the safety and good appearance of the building. For the common areas inside the flat and those reserved for the owner’s sole use (e.g. balconies, terraces) the unit owner is responsible for performing and covering the cost only of maintenance and minor repairs.
- clarifies the scope of owners’ duty of notification to the person responsible for building maintenance - until now owners have only been required to inform the building manager that they have taken ownership, including their address. Now they are also required to disclose their place of residence. They must also disclose in the same scope the name and place of residence of a person they allow to use their flat for a non-temporary period (typically lease).
- due dates for paying the billing statement will be stipulated only by Act No. 67/2013 - the due dates for billing and paying performance associated with or related to use of the flat will now be regulated only by Act No. 67/2013. Financial settlement should thus take place no more than eight months after the fiscal period ends.
- clarifies owners’ rights to view the documents of the person responsible for building management - unit owners will have the right to make copies, extracts and duplicates at their own expense. This change comes in response to the frequent problem where owners are unable to get copies proving or disproving the correct management on the part of the person responsible for managing the building, even at their own cost, if the articles of association do not directly grant them that right.
- introduces the unit owner’s obligation to report any planned construction changes inside the flat -

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construction changes in this sense include activities that do not require even reporting under the Building Act.

- simplifies forced sale of units - the current legislation on forced sale of an owner's unit is quite cumbersome and time-consuming and thus practically unusable. The proposed amendment would greatly simplify this process. Forced unit sales will now take place if the following conditions are met: (i) written warning from the building manager to the owner with a suitable grace period for eliminating the defective situation, (ii) filing the proposal must be approved by the unit owners with a majority of all votes and a majority of all unit owners, (iii) the material signs of undesirable conduct of a unit owner must be met.
- clarifies that debts for overdue building management contributions pass to the new owner along with transfer of the unit - the amendment stipulates when debts for overdue building and plot management contributions, debts for performance associated with or related to use of the flat, and debts for advance payments for the above-mentioned performance (but not advance payments already paid but not yet billed for performance associated with use of the flat) pass to the new owner of the unit.
- proposes the introduction of exceptions to the pre-emption right to a co-ownership share in real property for certain cases in flat co-ownership - the proposed change comes in reaction to problems associated with re-introducing the pre-emption right especially in apartment buildings where parking spots are part of a special non-residential unit.
- clarifies the definition of building and plot management, which the person responsible for building and plot management is entitled and obliged to perform.
- proposes the introduction of a substitute assembly with a quorum limited by the presence of unit owners holding at least 40% of all votes.
- proposes eliminating the prohibition of agreeing on a contractual penalty in flat leases - the contractual penalty plus the surety must not exceed three times the monthly rent.

The Amendment also affects building management for buildings with no owners' association and addresses the issue of takeover of or accession to debts defined by law on the part of the owners' association. The Amendment also addresses the issue of interpretation over when at the latest unit owners are required to establish an owners' association.

Of course the Amendment will involve a great number of other changes, including establishment and creation of an owners' association with a sole owner of all units and the greatest possible number of owners that will require enacting articles of association.

The Amendment is expected to go to the Chamber of Deputies for its reading. Given the extremely

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broad scope of proposed changes, the bill will in all probability undergo a number of changes. We will keep you informed of developments in the legislative process for the Amendment.

If you have any questions or concerns, we would be happy to discuss them with you.

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