

Residential co-ownership in the light of the amendment to the Civil Code effective from 1st July 2020

Abstract

In this thesis I deal with the institute of residential co-ownership and the changes brought by Act No. 163/2020 Coll., amending Act No. 89/2012 Coll., the Civil Code, as amended, and other related acts. This amendment to the Civil Code fundamentally interferes with the legal regulation of residential co-ownership, ie also with the provisions concerning an association of unit owners with which I deal mainly in this thesis.

For its clarity, the thesis is divided into parts in which I try to systematically present the changes that the above-mentioned amendment to the Civil Code has brought. An important part of the thesis is also a comparison of the changes with the regulation effective before 1st July 2020.

In the introduction, I first present the subject of research in general and then in a short historical excursion I approach the development of residential ownership in our territory. In my opinion, the main point is the view into the last century, where co-ownership respectively residential ownership changed the most. In connection with the historical development, it is important to mention the legal principle of *superficies solo cedit*. This principle, known since the second century AD, has an important role in the Civil Code, especially when talking about real estate.

In the following parts I deal with specific innovations in the Civil Code, their comparison with the previous regulation and an evaluation of the work of legislators.

The most significant changes brought by the amendment to the Civil Code, to which I pay attention in my thesis, I consider, for example, the regulation of the unit owner's rights and obligations, especially the specification of the owner's ability to intervene in the common areas reserved to be exclusively used by a unit owner. Another significant change is a simplified section 1184 dealing with the ordered sale of a unit to help the associations of unit owners to deal with maladjusted members.

Among the important changes that I discuss in my thesis is the removal of the possibility of forming an association of unit owners in a declaration according to section 1166 or by a contract for construction according to section 1170. Newly, this legal entity can be formed only through the approval of the articles of association or by the decision of the sole owner of all units in the building.

In my opinion, the most significant change is the recasting of section 1198 laying down conditions under which an association must be formed. I deal with this topic in the most extensive part of this thesis dedicated to the association of unit owners, as a legal entity formed for the purpose of ensuring the administration of a building and tract of land. The new provision clearly sets out when an association should be formed at the latest. Now it is clear from section 1198 that if the four unit owners want to transfer ownership of another unit to the fifth owner, they must first form an association of unit owners.

Part of the thesis is the introduction of the bodies of an association of unit owners, including the definition of their competence or analysis of the reasons for which an association can be dissolved.

In the thesis you will also find many court decisions that help us better understand the use of individual provisions of the Civil Code and specifically the residential co-ownership in practice.

Key word: residential co-ownership; association of unit owners; amendment to the Civil Code