

POLAND

16 July 1991

Executive Order on Land Use Management Law

92EP0086A Warsaw DZIENNIK USTAW in Polish No 72, 19 Aug 91 Item No 311 pp 993-997

[Executive Order of the Council of Ministers dated 16 July 1991 concerning the execution of certain regulations of the law on land use management and expropriation of real estate]

[Text] Pursuant to Article 21, Paragraph 10; Article 31, Paragraph 5; Article 37; Article 40, Paragraph 5; Article 41, Paragraph 3; and Article 45, Paragraph 2, of the Law of 29 April 1985 on Land Use Management and Expropriation of Real Estate (DZIENNIK USTAW [Dz.U.], No. 30, Item 127, 1991), the following is hereby ordered:

Chapter 1. General Provisions

Paragraph 1. The articles referred to in this executive order denote, unless otherwise specified, articles in the Law of 29 April 1985 on Land Use Management and Expropriation of Real Estate (Dz. U., No. 30, Item 127, 1991).

Paragraph 2. Whenever this executive order refers to:

- 1) A district office, this means a district office of the general government administration.
- 2) The real estate owner, this means either the State Treasury in whose behalf the district office of the general government administration is acting, or the gmina [local government] in whose behalf the gmina governing board is acting.

Chapter 2. Sale or Release for Perpetual Usufruct of Real Estate Owned by the State Treasury or by a Gmina

Paragraph 3.1. Built-up land, land set aside for build-up, and buildings and premises may be subject to sale if the sale results in making them a separate object of ownership -- separate from land.

3.2. Built-up land or land set aside for build-up may be released for perpetual usufruct.

Paragraph 4.1. The sale or release for perpetual usufruct of the real estate referred to in Paragraph 3 takes place either by means of an auction or in the absence of an auction.

4.2. The procedure for selling real estate or releasing it for perpetual usufruct by means of an auction is governed by separate regulations.

4.3. The sale of real estate or its release for perpetual usufruct without an auction takes place in the cases specified in Article 4, Paragraphs 2, 6, 7, and 9; Article 6; Article 21, Paragraph 7; Article 23, Paragraph 4; Article 24, Paragraph 3; Article 61; Article 69; Article 80, Paragraph 2; Article 82, Paragraph 2; Article 83, Paragraph 2; and Article 88, Paragraph 1.

4.4. In cases of the sale of real estate or its release for perpetual usufruct without an auction, the list referred to in Article 23, Paragraph 1, specifies the deadline after whose expiration the price

specified in the list ceases to be binding.

Paragraph 5.1. In the event that built-up land is released for perpetual usufruct, the real estate owner and the potential purchaser engage in negotiations in the course of which they reach agreement on the terms of the contract concerning the matters referred to in Article 23, Paragraph 2, as well as in Articles 239 and 240 of the Civil Code.

5.2. Once all the terms negotiated are agreed upon and set forth in writing, this is regarded as determining the purchaser as construed by Article 24, Paragraph 4. The written record is the basis for concluding the agreement in the form of a notarial act.

Paragraph 6. Single-family houses and dwelling units in apartment buildings may be designated for sale regardless of their size if their remodeling is technically infeasible or inexpedient.

Paragraph 7. A single-family house or a dwelling unit in an apartment building occupied by two or more tenants may be sold as co-owned property.

Paragraph 8. In the event of the remodeling, addition of one or more floors, or other expansion of the building referred to in Article 21, Paragraph 3, resulting in the addition of a separate dwelling unit, the surface area of that dwelling unit is excluded from the surface area of the part of the building constituting the common property of discrete apartment owners.

Paragraph 9.1. The following outlays are, upon the recommendation of the buyer, debited to the sale price of a building or a dwelling unit:

- 1) Major renovation of the building or dwelling unit.
- 2) Remodeling of attic or other premises into a dwelling unit for sale.
- 3) Addition of a new floor or other expansion of a building with the object of adding another dwelling unit.

9.2. When determining the amount of the outlays referred to in Subparagraph 1, allowance is made for the extent of the actually executed operations on taking their value as of the day on which the record referred to in Paragraph 5, Subparagraph 2, is prepared.

Paragraph 10.1. In the event of sale of real estate to its perpetual usufructuary the first annual usufruct fee is credited to the purchase price, upon reappraising the worth of that fee on the day the agreement is signed.

10.2. In the event of sale of real estate to its perpetual usufructuary who had paid a lump-sum fee for the entire or partial period of the usufruct, the part of that fee corresponding to the utilized period of perpetual usufruct is credited to the purchase price, upon reappraising the worth of said part on the day the agreement is signed.

Paragraph 11.1. The sale price or the first fee paid for the perpetual usufruct of the real estate should be paid by the purchase not later than on the day the agreement is concluded, with the proviso of Subparagraph 2.

11.2. In the event of the sale or lease for perpetual usufruct of real estate without an auction, the payment of the sale price may be, on the request of the purchaser, made in annual installments

over a period of up to 10 years. The related claims of the State Treasury or a gmina are subject to securing by means of mortgage insurance.

11.3. In the event the sale price is paid in installments, the interest payable is subject to an agreement between the parties.

11.4. The installments and interest referred to in Subparagraphs 2 and 3 are payable in advance not later than by 31 March of each year.

Paragraph 12.1. The owner who has transferred title to the real estate to the State Treasury or to a gmina in accordance with Article 29 is entitled to the payment of compensation in an amount corresponding to the price of the real estate as reappraised in terms of its value on the day title to its ownership is transferred, provided it is not higher than the compensation for expropriating that real estate would be.

12.2. As a result of the termination of an agreement for perpetual usufruct of real estate, the person with whom the agreement was terminated is entitled to a refund of the reappraised first annual fee he had paid as well as to the payments referred to in Article 242 of the Civil Code; he is likewise entitled to a refund of the annual fees for the unutilized period of perpetual usufruct if such fees had been paid in accordance with the regulations in force.

Chapter 3. Administration of the Real Estate Owned by the State Treasury or by a Gmina

Paragraph 13.1. An administrator may be appointed for real estate on the request of a state or communal organizational unit lacking legal entity status.

13.2. The request referred to in Subparagraph 1 should contain information about the location and surface area of the real estate and the purpose for which it is to be utilized.

13.3. The request referred to in Subparagraph 1 should be accompanied by:

- 1) An extract from a map of the locality.
- 2) Information on the purpose of the real estate in the local land use plan.
- 3) With respect to a registered architectural landmark -- the opinion of the voivodship landmark curator.

Paragraph 14.1. The decision to appoint an administrator for real estate should contain:

- 1) The designation of the administrator.
- 2) The designation of the real estate according to the land registry and land and building records.
- 3) Purpose of real estate as specified in the local land use plan, purpose for which the administrator is appointed, and the method for utilizing the real estate, inclusive of the build-up schedule.
- 4) Price and fees associated with the administration of real estate, with allowance for prices of land, buildings, facilities, or premises.

5) Information on possible revision of price of the real estate and the related revision of administrative fees.

6) Duration of administration.

14.2. The transfer of real estate for administration in accordance with the decision referred to in Subparagraph 1 is based on a transfer protocol. This provision applies correspondingly once the period of administration expires.

Paragraph 15.1. In the event that the administration is terminated on the request of the administrator and upon the transfer of the real estate to administration by another organizational unit, the settlement of accounts for buildings, facilities, premises, and investments initiated, takes place between these units.

15.2. In the event that the administration is terminated without transferring it to another organizational unit, the settlement of accounts takes place between the real estate owner and the administrator.

Paragraph 16.1. The agreement for the transfer of real estate between state or communal organizational units lacking legal entity status is correspondingly governed by the provisions of the Civil Code concerning obligations.

16.2. The transfer of real estate for administration is based on the signing of a transfer-and-receipt document.

Paragraph 17. Unless separate regulations specify otherwise, facilities not needed by the unit to which the real estate is transferred are, insofar as such facilities can be separated from land, transferred for use to another organizational unit with the consent of the real estate owner.

Paragraph 18. The agreement for the transfer of real estate specifies:

- 1) The parties to the agreement.
- 2) The district office or gmina board granting the permit for the conclusion of the agreement.
- 3) The parameters of the real estate according to land and building records and the land registry.
- 4) The purpose of the real estate as stated in the local land use plan, the purpose for which the real estate had previously been transferred for administration, and the method of using the real estate, including also the build-up schedule.
- 5) The price and administrative fees for the transferred real estate, with allowance for the prices of land, structures, facilities, or premises.
- 6) Possibility of reappraising the price of the real estate and hence also the administrative fees.
- 7) Duration of administration of real estate within the framework of the period of time specified for the transferring unit.
- 8) Schedule for preparing the transfer-and-receipt document.

Paragraph 19.1. The transfer of real estate between state or communal organizational units which lack legal entity status takes place in return for a monetary consideration.

19.2. The value of the buildings, facilities, and premises included in the agreement is taken as the basis for figuring the payments in the cases referred to in Subparagraph 1. Administrative fees as of the day on which the agreement is concluded are credited to that value. In the calculations allowance is also made for the part of administrative fee not utilized in a given year by the transferring unit.

Paragraph 20. The expenses incurred in acquiring the administration of the real estate referred to in Article 9, Paragraph 2, are borne by the state or communal organizational units acquiring the administration.

Paragraph 21. The dissolution of a state or communal organizational unit that lacks legal entity status causes the expiration of the administration of the real estate entrusted to that unit.

Chapter 4. Determining the Fees for Perpetual Usufruct and Administration of Real Estate

Paragraph 22.1. The district office, with respect to land owned by the State Treasury, and the gmina board with respect to gmina-owned land, determines the annual fee for the usufruct of land or administration of real estate in accordance with the price determined under Article 39.

22.2. In the event of the price reappraisal referred to in Article 43, Paragraph 1, the established price of the land under perpetual usufruct or for real estate under administration may not be higher than the value of the land or real estate determined according to Article 38.

Paragraph 23. In the event of administration of built-up land, the administrative fee is determined with allowance for the combined price of the land and of the structures, facilities, and premises standing thereon.

Paragraph 24.1. The annual fee for usufruct from land designated for housing construction and from built-up residential-zoned land is reduced by 50 percent if the monthly income per family member of the person obligated to pay that fee does not exceed 50 percent of the nationwide average monthly income. This discount is not available for persons who already availed themselves of the discount mentioned in Article 41, Paragraph 2.

24.2. In the event that the right to perpetual usufruct of land is transferred to a third party, the eligibility for the discount granted under Subparagraph 1 is transferred to that person.

24.3. The annual fee for the land under perpetual usufruct that is used, or to be used, for the construction of the following structures is reduced to 0.3 percent of the price of land determined in accordance with Article 39:

- 1) Places of worship, with the accompanying buildings.
- 2) Accommodations for [teaching the Roman Catholic] catechism.
- 3) Vicarages in diocesan and monastic parishes.
- 4) Diocesan archival buildings and museums.

5) Theological seminaries.

6) Monastery buildings.

7) Offices of the chief officers of churches and other denominational unions.

Paragraph 25.1. Pensioners and annuitants and other persons who are members of a housing cooperative and are eligible for the privileges referred to in Article 41, Paragraph 2, and in Paragraph 24, Subparagraph 1 above, avail themselves of these privileges by being granted discounts of fees for their share of the operating costs of buildings, with the extent of the discount corresponding to that of the reduction in the annual fee payable by the cooperative for perpetual usufruct of land.

25.2. The reduction in the annual fee for perpetual usufruct of land is granted by the district office with respect to land owned by the State Treasury and by the gmina board with respect to gmina-owned land, proportionately to the surface area of the dwelling units occupied by the pensioners and annuitants referred to in Subparagraph 1.

Paragraph 26. The annual fees mentioned in this executive order are not collected from the perpetual usufructuaries who had previously, on the basis of previously binding regulations, made a lump-sum payment for the entire period of perpetual usufruct. Perpetual usufructuaries who had paid a fee for a period of time shorter than the period of validity of their right to perpetual usufruct pay the remaining fees due in accordance with the present executive order following the expiration of that period.

Paragraph 27.1. The first fee for the perpetual usufruct of land is paid not later than on the day the agreement referred to in Article 19 is concluded, and the first fee for administration of real estate is paid within 30 days from the day on which the ruling to transfer the real estate for administration becomes final. The annual fee is payable in advance by 31 March of each year, unless the parties to the agreement agree upon another deadline, which however may not be later than during the calendar year in question.

27.2. Organizational units which acquired the administration of real estate under an agreement, do not pay the first administrative fee.

Chapter 5. Guidelines and Procedure for Determining Additional Fees for the Failure To Build Up or Utilize Land Within Specified Periods of Time

Paragraph 28.1. The amount of the additional annual fee referred to in Article 45, Paragraph 1, hereinafter referred to as "the fee," is 10 percent of the price of land for the first year after the expiration of the deadline for building up or otherwise exploiting the land under the land use plan, agreement, or ruling.

28.2. For every subsequent year after the expiration of the deadline referred to in Subparagraph 1 the fee is augmented by an additional 10 percent of the price of land.

28.3. The price of the land referred to in Subparagraphs 1 and 2 equals the price on the basis of which annual fees for perpetual or regular usufruct from land or administration of that land are determined.

Paragraph 29.1. The additional fees are paid by perpetual usufructuaries, administrators, or

usufructuaries of land.

29.2. The additional fees are not charged in the event of:

1) Failure to develop the land in question if the State Treasury or a gmina was obligated to develop it and if the absence of that development renders impossible the utilization of the structures erected on that land in accordance with a land use plan, an agreement, or a ruling.

2) Presentation by the administrators or usufructuaries, to the district office of the general government administration in case of land owned by the State Treasury or to the gmina board in case of gmina-owned land, of a request for taking over the land which became unnecessary to them.

Paragraph 30. The additional fees are specified in rulings issued by the district office of the general government administration in case of land owned by the State Treasury and by the gmina board in case of gmina-owned land. The rulings also specify the deadlines for payment of fees.

Paragraph 31.1. The obligation to pay the additional fees arises on the 1st day of January in the year following the ineffective expiration of deadlines for building up or otherwise utilizing land, which deadlines are specified in the land use plan, the agreement, or the ruling.

31.2. The fees are payable not later than by 31 March of each year.

Paragraph 32. The utilization referred to in Paragraph 28, Subparagraph 3, and in Paragraph 29, Subparagraph 1, is construed to mean utilization established as a fact prior to 5 December 1990.

Chapter 6. Responsibilities of State Organizational Units or Gminas Concerning the Administration of Housing

Paragraph 33.1. The responsibilities of the administrator of a residual building that is co-owned by the State Treasury or a gmina and individuals include the proper maintenance of the premises and facilities designed for common use and the performance of repairs as the need arises. Special obligations in this respect are defined in separate regulations.

33.2. The administrators of the buildings referred to in Subparagraph 1 are obligated to perform in the dwelling units constituting discrete real estate:

1) Repairs and replacements of central heating facilities together with heaters (with the exception of single-floor heating), water supply facilities, natural gas and hot water systems, plumbing facilities, electrical facilities, telephone facilities, and the collective television antenna, with the exception of appliances.

2) Replacement of worn window and door joinery, floorings and floor tiles, and also wall plaster, if also done in other apartments as part of a major renovation.

33.3. The provisions of Subparagraph 2 do not apply to office or store space constituting separate real estate; the responsibilities of the building administrator concerning repair of such units and the installation of utilities therein should be defined by the parties in an agreement.

Paragraph 34.1. Owners of dwelling units in buildings co-owned by individuals and the State Treasury or a gmina pay every month their share of the cost of the maintenance and repair of

these buildings in an amount prorated according to the binding rental or lease rates for dwelling units, as calculated on the basis of Article 15, Paragraph 4, of the Dwelling Unit Law of 10 April 1974 (Dz.U., No. 30, Item 165, 1987; No. 10, Item 57, 1989; No. 20, Item 108, 1989; No. 34, Item 178, 1989; No. 35, Item 192, 1989; and No. 4, Item 19, 1990; No. 82, Item 190, 1990; and No. 34, Item 198, 1990), without applying raises for norm-exceeding dwelling area.

34.2. The share in the repair and maintenance cost referred to in Subparagraph 1 as well as fees for the supply of cold and hot water and for the use of central heating and the collective television antenna are payable by the 10th day of every month for the previous month.

Paragraph 35.1. The existing administration of a building co-owned by the State Treasury or a gmina and individuals continues until all the dwelling units in the building are sold, unless it is eliminated earlier by all the dwelling unit owners.

35.2. In the event a contract for the sale of the last dwelling unit in the building referred to in Subparagraph 1 is concluded, the existing administrator calls upon the co-owners of the building to designate a new administrator within three months.

35.3. If the co-owners fail to designate a new administrator within the time limit specified in Subparagraph 2, and if they do not either apply to a court of law, under the provisions of the Civil Code, to designate a new administrator, the current administrator notifies them that he ceases to administer the building at a specified deadline and conveys to them a written record describing the real estate and the rights and responsibilities appertaining thereto.

35.4. The procedure for transferring the administration to a new administrator appointed by the co-owners of the building or by the court of law, and the attendant responsibilities of the parties to the agreement including the financing of repairs in arrears, is determined in said agreement.

Chapter 7. Interim and Final Provisions

Paragraph 36. Owners of buildings or dwelling units acquired on the basis of a sale contract concluded prior to the effective date of the present executive order pay the sale price in the amount and on the terms defined in such contract.

Paragraph 37.1. The annual fee for the perpetual usufruct from land designated for housing construction or built-up residential areas, as established in connection with the reappraisal of land prices performed after 5 December 1990, is reduced by:

- 1) 50 percent in 1991.
- 2) 40 percent in 1992.
- 3) 30 percent in 1993.
- 4) 20 percent in 1994.
- 5) 10 percent in 1995.

37.2. The overall reduction in the fee for perpetual usufruct, granted pursuant to Subparagraph 1 and Article 41, Paragraph 2, and (in the present executive order) Paragraph 24, Subparagraph 1, may not exceed 50 percent of the annual fee.

Paragraph 38.1. In the event of a delay in payment of the fees referred to in the present executive order, interest on these fees is charged under the provisions of the Civil Code.

38.2. The reappraisal referred to in Paragraphs 10 and 12 is performed on the basis of the indicators defined in Paragraph 6 of the Executive Order of 16 July 1991 of the Council of Ministers Concerning the Guidelines and Procedure for Settling Accounts in the Event of the Return of Expropriated Real Estate (Dz.U., No. 72, Item 315).

Paragraph 39. The following are hereby null and void:

1) Executive Order of 16 September 1985 of the Council of Ministers Concerning the Detailed Guidelines and Procedure for Leasing Land for Perpetual Usufruct and Selling State-Owned Real Estate, the Related Expenses and Account Settlements, and the Management of the Real Estate Sold (Dz.U., No. 14, Item 75, 1989).

2) Executive Order of 16 September 1985 of the Council of Ministers Concerning the Detailed Principles and Procedure for the Transfer of the Management and Utilization of State-Owned Real Estate, Its Transfer Between State Organizational Units, and the Settlement of the Related Accounts (Dz.U., No. 47, Item 240, 1985; and No. 33, Item 244, 1988).

3) Executive Order of 16 September 1985 of the Council of Ministers Concerning the Guidelines and Procedure for Determining Fees Charged for the Perpetual Usufruct from Land Management and Utilization (Dz.U., No. 14, Item 78, 1989).

4) Executive Order of 16 September 1985 of the Council of Ministers Concerning the Guidelines and Procedure for Determining Annual Fees for the Failure To Utilize Land in Accordance With Its Purpose (Dz.U., No. 47, Item 242, 1985; and No. 33, Item 246, 1988).

Paragraph 40. The present executive order takes effect after 14 days from the date of its publication.

Chairman of the Council of Ministers: J.K. Bielecki.