

Perpetual usufruct – defending against an increase in fee



Have you received an updated perpetual usufruct fee?



Have you submitted a relevant letter to the Self-Government Board of Appeals (SKO)?



Are you considering challenging the SKO decision?



Do you need support at the stage of proceedings in court?

TPA Poland offers tailored solutions for developers and investors with respect to questioning the annual fee for perpetual usufruct.

A wide group of cooperating experts can provide comprehensive range of services. Our experience in the field of providing services to the real estate industry allows for a rational and prompt evaluation of the market level of annual fee in a particular location, as well as for advisory and litigation support at all stages of court proceedings.

Perpetual usufruct fee update

The primary obligation of a perpetual usufructuary of a land is to pay the applicable fee. The fee is determined by multiplying the percentage rate and the value of property on the day perpetual usufruct was established. However, one has to bear in mind that this value can change. It can be updated, although not more often than once in three years. When can the update of the fee can take place? When the value of the property - determined on the basis of a valuation prepared by a property valuer - changes. The valuer prepares the valuation on the basis of transaction prices of other properties characterized by similar parameters. It is worth knowing, that such

a calculation includes only up-to-date, market prices of similar properties. These prices then have to be related to certain factors, important for a given site, such as for example location or neighborhood.

If the analysis carried out provides for a possibility to change the perpetual usufruct fee, the existing fee will be terminated, and the new amount will be presented by a relevant local government authority.

The bad news for perpetual usufructuaries of properties is that if the fee is updated, it usually increases considerably. Our practice shows that updated fee is often too high; however,

what's important, there are means to verify whether the proposed increase is justified. We have successfully supported our Clients in carrying out an analysis in this respect.

When the fee goes up

Receiving a letter from the authority informing about the new fee amount does not mean that the perpetual usufructuary has to pay it immediately. On the contrary, he or she has the right to challenge the fee update within 30 days since the previous fee was terminated. What to do? All it takes is to submit an appropriate application to the SKO, competent with respect to the location of the property. The application should indicate that the fee update is unjustified, or that it is justified, but at a different amount. What is important is that the perpetual usufructuary does not need to present an exhaustive justification of his or her opinion, as the burden of proof in this respect lies with the entity that is increasing the fee. The authority has to prove that the conditions for updating the fee have been satisfied. If it fails to do so, it will lose the case.

However, if the authority presents such evidence, and the SKO agrees with its arguments, it does not mean that it is no longer possible to pursue one's claims. The SKO's ruling can be challenged by lodging an objection, which equals a request to transfer the case to a common court. The moment the case reaches the court, the general rules of procedure and evidence under the Code of Civil Procedure apply. In that case, it is the perpetual usufructuary wishing to challenge the annual fee update that shall present evidence to support his or her argumentation.

Our practice shows that often only litigation in court gives the results expected by the perpetual usufructuary, namely lowering the amount of the updated annual fee.

Perpetual usufruct right conversion

As of January 1, 2019, the perpetual usufruct right for properties developed for residential purposes, or business purposes in case of multi-housing developments with the majority of housing premises, was transformed into an ownership title by virtue of law. As a result, current owners are obliged to pay the "transformation fee" to the heretofore owner, namely the local government units or the State Treasury for a minimum of 20 years in the amount corresponding to

the annual fee for perpetual usufruct before the transformation.

The issue of the current annual fee becomes particularly important in the context of the complete erasure of the perpetual usufruct right and replacing it with the ownership right.

Experience so far has shown that the transformation of the perpetual usufruct into ownership entails and will entail fees, the mechanism of which is based on the current annual fee.

A wave of annual fee updates

The fact that the transformation fee is based on the current annual fee seems logical from the economical point of view of the existing owner.

At the same time, it gave rise to an official wave of annual fee updates for properties of all functions in Poland.

The number and severity of notifications on the update of the annual fee is particularly acute for new perpetual usufructuaries who finalized the land purchase transaction by the end of 2018 and in the recent months.

Costs for developers and investors

The ongoing updates of the fees may have a considerable impact on the costs borne by investors and developers in the immediate term.

In many cases, new annual fees are exaggerated with respect to the objective value of the land, as supported by the project feasibility analysis. In today's reality of shrinking developer margins, resulting from high construction costs and in the view of the expected market cooldown, the increased property upkeep costs during the development process are of particular importance.

Additionally, in the case of housing projects, the final recipients of apartments increasingly often pay attention to whether the costs of the fraction of the annual fee for a particular dwelling are not exaggerated. If the cost for the future residents is too high, it may affect the pace of selling apartments by the developer, who developed the project at the property covered with overstated annual fee.

THREATS:

- A DECREASE IN THE PROJECT PROFITABILITY
- A DECREASED PACE OF APARTMENT SALES IN THE PROJECT

TPA Poland and Baker Tilly Woroszylska Legal experts are at your disposal at any stage necessary to challenge the new fee amount. We invite you to contact us.

Contact

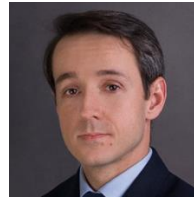


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About TPA Poland

TPA is a leading international consulting group, offering comprehensive business advisory services in 12 countries of Central and South-Eastern Europe. In Poland, TPA belongs to the largest consulting companies, with more than 200 experts in offices in Poznań, Warsaw and Katowice. We provide international corporations and large domestic companies with effective business solutions in terms of tax advisory, transaction advisory, financial audit, corporate finance, accounting outsourcing as well as payroll administration services and HR consulting

About Baker Tilly Woroszylska Legal

Baker Tilly Woroszylska Legal is a law firm focused on providing services to entrepreneurs in all key areas of their business activity. The law firm team consists of lawyers with many years of international experience in the field of transactions and advisory. As a member of the TPA consulting group and an independent member of Baker Tilly International, a global network providing comprehensive advisory services, the law firm combines advantages of integrated, interdisciplinary 'one-stop-shop' services with the local expertise and global reach of the advisory group.

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