

Transfer of rights and obligations under the notification of construction work

The law of 20 February 2015 amending the Construction Law and some other selected acts (Journal of Laws of 2018, item 443) introduced into the Polish legal system a mechanism for assignment of the rights and obligations arising under the notification of intention to carry out construction work. Until the date when the law came into force, i.e. 28 June 2015, the only party authorised to perform construction work specified in the notification was the entity which had filed the notification. This situation would frequently create problems, especially if the notified construction work constituted part of a larger planned construction undertaking whose other components were carried out pursuant to a building permit. In such cases, it was difficult to change the investor using solutions available under the administrative law. Whereas the assignment of the building permit was a simple procedure, transferring the notification was not permitted.

The Law of 20 February 2015 introduced changes in this respect. Currently, the rights and obligations under the notification to which the competent authority has not lodged a statement of opposition may be transferred to another person by way of a decision under Art. 40.4 of the Building Law. Under Art. 30.5 of the Building Law, the authority notified of the intention to carry out construction work may lodge a statement of opposition within 21 days of the notification. This timeframe may be extended if the party submitting the notification is required to supplement the notification. A statement of opposition should be lodged via an administrative decision addressed to the party which submitted the notification. The time limit for filing a statement of opposition is maintained provided that decision is posted in the designated postal service provider's office dur-

ing the 21-day time limit. Whether or not the decision has been served upon the addressee does not matter. However, the passing of 21 days is not the only pre-requisite excluding the lodging of a statement of opposition by the architectural and construction administration authority. Pursuant to Art. 30.5aa of the Building Law, the architectural and construction administration authority may issue ex officio a statement to the effect that there are no grounds to enter a statement of opposition. Such a statement precludes the possibility of lodging a statement of opposition and authorises the investor to commence construction work.

Therefore, the decision assigning the rights and obligations in question is permitted not only if the time limit has passed, but also when a statement to the effect that there are no grounds to enter a statement of opposition has been issued. The decision transferring the rights and obligations under the notification can be issued immediately upon the occurrence of either of the said circumstances.

The provisions of Art. 40.1 and Art. 40.3 of the Building Law apply accordingly to the process of issuing decisions transferring the rights and obligations under the notification. This means that the architectural and construction administration authority with which the notification was filed is the competent authority to issue the relevant decision. It is usually the case that the entity seeking transfer of the rights and obligations under the notification requests the decision to effect the transfer. However, there are no obstacles that would prevent the entity which filed the notification of the intention to carry out construction work from requesting the decision transferring the rights and obligations.

The request for transfer of rights and obligations under the notification should be accompanied by a statement of the party to which the rights and obligations are transferred to the effect that the party accepts all terms and conditions related to the notification of construction work and that they have the right to use the land on which construction work specified in the notification is to be carried out for construction purposes.

Under Art. 40.3 of the Building Law, only entities involved in the transfer of the rights and obligations under the notification can be party to the procedure for the transfer of the said rights and obligations. Therefore, the solution is similar to the procedure permitting the assignment of building permits.

The transfer of rights and obligations under the notification occurs when the decision transferring the said rights and obligations has become final. The decision becomes final not only upon the ineffective expiry of the time limit for lodging a statement of opposition but also when a competent entity waives its right to lodge a statement of opposition, as referred to in Art. 127a of the Administrative Procedure Code. Once the last party to the proceedings has delivered a statement on waiving the right to lodge a statement of opposition to the architectural and construction administration authority, the decision transferring the rights and obligations becomes final and the new investor may commence the construction work specified in the notification.

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