

Bodies of the Unit Owners Association in Theory and Practice

Abstract

The aim of this master thesis is to provide a comprehensive analysis of the legal regulation of the bodies of the Unit Owners Association in the context of the legal regulation of the Association as a legal entity with a defined purpose and limited legal personality. In the course of this work, I have focused primarily on the definition of the various bodies of the Association, which are the of Owners' Assembly, the statutory body and the optional bodies established, if any. Attention is also given to the membership of the elected bodies of the Association, including the recent phenomenon of the professionalization of the Association's chairperson's office.

The thesis is divided into nine chapters, which are further subdivided.

In the introductory chapter we find the reasons that led the author to choose the topic. A substantial part is devoted to the history of the legal regulation of flat ownership since 1966. The chapter concludes with a brief description of the aim and methodology of the thesis.

The second chapter provides a basic characterization of the Unit Owners Association as a legal entity with a defined purpose and limited legal personality. The ways in which the Association was established and its subsequent formation are defined here. Attention is also paid to other topics, such as the regulation of the dissolution and termination of the Association, the prohibition of entrepreneurship, and the possibilities of acquiring and disposing of property. Membership of the Association, which is inextricably linked to the ownership of the unit, is also defined, with a focus on the rights and obligations of members towards the Association, including liability for the association's debts.

The third chapter contains general explanations of the bodies of the Association, which are the Owners' Assembly, the statutory body and, where appropriate, the established facultative body. The bodies are divided on the basis of defined criteria into, for example, elected and non-elected bodies or supreme, statutory and other (control) bodies.

The fourth chapter deals with the Owners' Assembly, which is the supreme body of the Association. The introduction focuses on defining the matters that are within the competence of the Assembly. The regulation of the meetings of the Assembly is important for practice, focusing on the convening of the Assembly, the requisites of the invitation and the decision-making at the meeting. The institution of a substitute assembly is introduced. Attention is also paid to decision-making outside the meeting. Finally, the possible defects of the Assembly's decisions and their consequences are discussed, which may include voidness, invalidity of the decision or the decision of the court pursuant to Article 1209 CC.

The fifth chapter contains the regulation of the statutory body of the Association, which may be either individual in the form of a chairperson of the Association, or collective in the form of a committee. The basis is the determination of its competence, which is generally conceived as residual. It is further divided into competence vis-à-vis the owners and the Association and vis-à-vis third parties. Attention is paid separately to the two forms of statutory body. Defects in the decisions of the statutory body are also addressed.

The sixth chapter deals with the formation of facultative bodies of the Association, the establishment of which may be provided in the articles of association. The most common type of body is the control body and therefore the main attention is paid to it, focusing on its competence and the exercise of control activities. This is followed by reflections about the conciliation (arbitration) body, in particular regarding to the applicability of the society's regulation. It concludes by indicating which other bodies could theoretically be introduced.

Chapter seven deals with the specifics of membership of an elected body. First, the conditions for membership are defined. This is followed by a definition of the duties of members of the bodies, focusing on the exercise of due care in the performance of their duties and the private and public law consequences of a breach of this duty. Finally, the possible options of the creation and termination of membership in an elected body are mentioned.

The eighth chapter is devoted to the phenomenon of the practice of the Associations of recent years, which is the professionalization of the office of the Association chairperson. The advantages and disadvantages of this trend are presented. This is followed by an outline of legislative changes, as seen by the author, which could lead to a solution of the current disadvantages of professionalization and to an improvement of the legislation. These proposals include compulsory professional insurance, anchoring the subject matter of the activity within a bound trade with proof of professional competence, a publicly accessible list of professional chairpersons or the mandatory establishment of a control committee.

The final chapter contains an evaluation of the fulfilment of the defined objective of the thesis. This is followed by an assessment of the current legal framework for bodies of Association, including an outline of its possible development from the author's perspective.

Keywords:

Residential co-ownership

Unit Owners Association

Owners' Assembly

Statutory body