

# Tips for developers. How to deal with the new law on apartment ownerships and unions?

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## Intro

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- Apartment Ownership and Apartment Associations Act (the **New Law**) enters into force on 01.01.2018
- Codification the result of which two currently existing laws, Apartment Ownership Act and Apartment Unions Act, will be merged



## Intro

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- Aimed at eliminating confusion deriving from two currently existing concepts: „Community of Apartment Owners“ (in Estonian *Korteriomanike ühisus*) and its „Administrator“ (*Valitseja*)
- Compulsory and automatic union
- The activities of the apartment unions should get more transparent
- Changes with regard to liability
- Clearer rules regarding the bankruptcy
- Pledge right



## Pledge right

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- Statutory first rank pledge right
- Amount of the pledge right of an apartment union shall be the amount of the management costs of the apartment ownership for the previous financial year
- The apartment union has the possibility to enforce its claims against the apartment owner even if the apartment is encumbered with the bank mortgage and the bank is not interested in joining the enforcement proceedings



## Pledge right

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- If an apartment ownership is encumbered with a mortgage before entry into force of the New Law, the amount of the right of security of the apartment union until expiry of the mortgage shall be 5% of the revenue to be distributed in the enforcement proceedings from the sale of the pledged object in the bankruptcy proceedings, but not more than the management costs
- Other mortgage holders have the right to obtain information from the apartment union on the amount and bases for the debt on management costs



## Pledge right

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- Mortgage of the bank from year 2002, claim EUR 15,000
- Apartment union pledge right EUR 2000 (management costs of the previous year)
- Claim of the apartment union EUR 2500
- Claim of the third creditor EUR 500
- Total claims EUR 18,000
- Sales proceeds **EUR 17,500**
- Apartment Union:  $5\% \times 17,500 =$  EUR 875 (as the first rank mortgagee)
- Bank: EUR 15,000 (as the second rank mortgagee)  
Remaining EUR 1625 ( $17,500 - 875 - 15000$ )
- Apartment Union: 1125 (as the third rank mortgagee)  
Remaining EUR 500 (shared equally between the union and third creditor)



# Regulating relationships of the apartment owners

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Upon an agreement and / or the articles of association

## Agreement

- It is possible to regulate the relationships differently than provided in the New Law, unless explicitly prohibited
- 2 situations when the New Law forbids regulating the relationships differently than provided in it + general rules
- Why advisable?

Regulating legal relationships more thoroughly than the law does, stipulating the terms and conditions by the apartment owners themselves

- Examples: enables e.g. agreeing on the conditions of use of the delimited parking places or cellars so that these could be used as a security of a loan (currently not possible) / majority of votes if taking a loan



## Regulating relationships of the apartment owners II

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### Articles of association

- Not compulsory
- Articles of association is a public document – available in the apartment unions register
- Amending the articles of association is possible upon a resolution of the general meeting of the apartment union
- If there is a conflict between the agreement and the articles of association, the agreement applies
- Example: enables distribution of the managing costs differently than provided in the law, could be necessary if there are commercial premises in the residential building





## Management

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- The apartment union will be managed by the management board or by the administrator
- No requirement of having a management board if the number of apartments does not exceed 10 or if all apartments belong to 1 person
- If the apartment union has no management board, it will be managed jointly by the apartment owners: e.g. for making transactions, the consent of all apartment owners is needed



## Management II

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- Administrator – legal person
- Has the obligation to appoint a building manager
- Necessary professional qualification of a real estate manager or apartment building manager
- Professional managing, higher duty of care than the management board members
- Liability lies on the administrator, i.e. primarily on the legal person
- May cause increased demand for professional apartment unions' management companies



# Bankruptcy

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- Liquidation of the apartment union is possible only if the apartment union and apartment ownerships could be dissolved
- Only on limited occasions: (i) the building has been destroyed; (ii) the building has not been constructed at all; or (iii) all the apartments belong to 1 person
- As a rule liquidation of the apartment unions is excluded
- Establishment of a management plan for restoring solvency of the apartment union by the court – *so-called* compulsory compromise
- Basically reorganising the apartment union

Thank You!



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