

COMMON PARTS MANAGEMENT ACT (IN FORCE AS OF 1 MAY 2008)

The Common Parts Management Act was promulgated in State Gazette # 6 / 23.01.2009 and entered into force on 1st May 2009.

Some of the important concepts and provisions introduced by the Act are summarized in this legal publication.

I. SCOPE

The Act regulates:

- Management of common parts in buildings with numerous owners;
- Rights and obligations of the owners and inhabitants of separate objects in these buildings.

Out of the scope of regulation by the Act is the management of common parts in buildings having maximum three separate independent properties belonging to more than one owner. In respect of such buildings the management of the common parts shall be governed by the provisions of the Property Act.

II. TYPES OF MANAGEMENT OF COMMON PARTS

There are two types of management of common parts namely:

- General Meeting of Owners; and
- Association of Owners.

We have set out below some basic information concerning these two types of management.

(A) GENERAL MEETING OF OWNERS

(1) **General Meeting of Owners**

(i) Right to vote

The Owner's voting right corresponds to the ideal parts belonging to the Owner in the common parts.

(ii) Convocation

- Initiative for convocation

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The General Meeting is convened by

- The Managing Board (the Manager);
- Controlling Board (the Controller);
- Owners having at least 20% of the ideal parts. In this case the Owners request the Managing Board/Manager to convene the General Meeting. In case of failure on the part of the Managing Board/Manager to convene the Meeting, the Owners may request the Mayor of the Municipality to do so.

In the case of a newly constructed block of flats the General Meeting has to be convened within 6 (six) months of the date of formation of the common parts. The first Meeting is convened by Owners having at least 20% of the ideal parts.

- Procedure for convocation

The Meeting is convoked by an invitation delivered at least 3 (three) days prior to the Meeting. The delivery of the invitation is evidenced by a receipt signed in duplicate.

The Law provides also a procedure for delivery of the invitation in the case the Owner is absent or refuses to accept it.

- Invitation

The invitation states: the agenda, the date, the hour and place of the Meeting.

- Excluded Dates

The Meeting cannot be convened and held:

- in the period from July 15th until September 15th;
- in the official holidays;
- in the days declared by the Council of Ministers as holidays.

- Restrictions on Representation

One person may represent maximum 3 (three) Owners.

(iii) Quorum

The General Meeting of the Owners may be held provided Owners having at least 67% of the ideal parts are present.

It is important to mention that in the lack of quorum the Meeting is adjourned for 1 (one) hour and then is legitimately held irrespective of the represented ideal parts.

(iv) Meeting

The General Meeting of the Owner cannot take decisions on issues outside the agenda except in cases of emergency.

The decisions are documented in a protocol.

(v) Adoption of Decisions

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The following majority is needed for adoption of decisions.

- Unanimous

To adopt decisions for building additional floors, adjacent parts, establishment of right to use and establishment of building right.

- 75% of the Ideal Parts Represented at the Meeting

To adopt a decision to expel an owner under the procedure set out under Article 45 of the Property Act. The owner to be expelled is not entitled to vote.

- 67% of the Ideal Parts Represented at the Meeting

To adopt a decision to carry out renovation or capital repairs.

- 50% of the Ideal Parts Represented at the Meeting

To adopt any other decisions.

(2) Managing Board (Manager)

- (i) Executive Organ

The Managing Board (Manager) is the executive organ managing the common parts.

- (ii) Term

The term of office is up to 2 (two) years.

- (iii) Members

The Managing Board has odd number of members (not less than three).

- (iv) Miscellaneous

- The members of the Managing Board (the Manager) may be paid remuneration is such is the decision of the General Meeting of the Owners.
- On Owner can refuse to be elected as a member of the Managing Board (Manager) only in the cases of long-term physical impossibility due to sickness or long-term absence in the respective year, as well as if proposed for repeated term in office.
- A meeting of the Managing Board is conducted at least once every three months.
- The decisions of the Managing Board are taken by simple majority.
- The decisions of the Managing Board are documented in a protocol.

(3) Controlling Board (Controller)

- The functions of the Controlling Board (Controller) are to control the activities of the Managing Board in respect of fulfillment of the budget and the decisions of the General Meeting on spending of the funds (e.g. checking of the petty cash at least once a year and reporting to the General Meeting of the Owners).
- The members are elected by the General Meeting of the Owners.

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- The term of office is up to 2 (two) years.
- The Managing Board has odd number of members (not less than three).

(B) ASSOCIATION OF OWNERS

(1) Separate Legal Entity

The Association of Owners is a separate legal entity having as a scope of activity the management of the common parts.

(2) Constituent Meeting – Unanimous Decision for Constitution

At the constituent meeting all of the Owners have to unanimously decide to form an Association of Owners.

(3) Registration

The Association of Owners is registered with Municipal Administration within 14 (fourteen) days of the constituent meeting.

The register is public.

(4) Membership in Association

The membership in the Association of Owners follows ownership i.e. if the title over a separate object is transferred to a new Owner, the latter will become member of the Association of Owners by law.

The only exception to the above rule applies in cases where the Association of Owners is a beneficiary of funding by the EU or the Bulgarian Budget for purposes of renovation of the building.

Note:

It seems to us that the entire concept Association of Owner as a separate legal entity engaged in the management of the common parts is conceived by the lawmakers with the main purpose of allowing Owners to apply for EU or State funding. *Prima facie* there seems to be no distinct advantage of the Owner forming an Association to the Owners acting through a General Meeting of the Owners.

(5) Governing Bodies of the Association of Owners

The governing bodies of the Association of Owners are

- The General Meeting of the Owners;
- The Managing Board (the Manager);
- Controlling Board (the Controller);

(6) Quorum / Convocation / Competences / Majority - Governing Bodies of the Association

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The rules and procedures concerning the functioning of the governing bodies of the Association are almost identical to the rules and procedures of the General Meeting of the Owners.

(Please see for more detailed description Section (A) above" GENERAL MEETING OF OWNERS").

III. REGISTRATION OF BUILDINGS WITH COMMON PARTS

(1) Public Register

The Municipal Administration keeps a public register of the buildings (or separate entrances in such buildings) having common parts which are located on its territory.

The Register contains information about the building or separate entrance in the building with common parts – address; floors and other individualizing characteristics.

(2) Free of Charge

The registration and the access to the data in the Register is free of charge.

IV. BOOK OF OWNERS

(1) Contents

The Book of Owners contains the three names of the Owner, the members of his/her family and the inhabitants, as well as description of the property and the initial date of inhabitation.

(2) Inscription of Owners (Inhabitants)

The inscription is made within 15 days from acquisition of the property and in respect of inhabitants within 15 days of the initial date of inhabitation.

(3) Access

Access to the Book of Owners is given to:

- The Managing Board (the Manager);
- The Controlling Board (the Controller);
- Owner in respect of his/her own data;
- The bodies of the Interior Ministry;
- The bodies of the Ministry of Regional Development and Public Works;
- The Mayor;
- The National Veterinary Agency.

(4) Addendum to the Book of Owner - Animals

The animals belonging to the Owners are inscribed in an addendum to the Book of Owners.

(5) Sample

Sample of the Book of Owners shall be adopted by the Minister of Regional Development and Public Works.

V. REPAIRS; RENOVATION AND MAINTENANCE OF COMMON PARTS

(1) General Rules

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(i) Decision

The General Meeting of the Owners (or the General Meeting of the Association) is competent to take a decision on Repairs, Renovation, Reconstruction and Restructuring.

(ii) Costs

The costs for Repairs, Renovation, Reconstruction and Restructuring are born pro-rata to the Owners' share in the common parts.

(iii) "Repairs and Renovation Fund"

The General Meeting of the Owners creates and maintains "Repairs and Renovation Fund".

The cash in "Repairs and Renovation Fund" is kept at a bank account open in the name of the Chairman of Managing Board (Manager) or in a bank account of the Association.

(2) Necessary Repairs

(i) Definition of Term

The term "*Necessary Repairs*" is defined as the activities needed to render the building, the common parts, installations or parts of them in accordance with the normative requirements for technical adequacy of the building and installations, including the roof with a view to removing the impediments and inconveniences for normal usage of the building and separate objects in it.

(ii) Decision

The funds needed for *Necessary Repairs* are immediately released on the basis of a decision of the Managing Board (the Manager).

The General Meeting of the Owners approves the costs incurred that have been substantiated with documents.

(iii) Costs

The law is not explicit on how the costs for *Necessary Repairs* are born. It seems that these are to be born pro-rata to the Owners' share in the common parts.

(iv) Necessary Repairs carried out by an Owner

Necessary Repairs carried out by an Owner at his own expense are reimbursed based on a decision of the General Meeting of the Owners.

If such repairs are not reimbursed to Owner in specified hereinabove the Owner is entitled to file a claim against the rest of the Owners who are jointly responsible.

(3) Emergency Repairs

(i) Definition of Term

The term "*Emergency Repairs*" is defined as the activities needed for prevention of destruction of the building, its constructive elements, common parts, installations or part of them, as well as for removal of considerable damages and deformations leading to danger to the life and health of the Owners, inhabitants and other people, to infliction of environmental damages and damages to the nearby buildings.

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(ii) Decision

The funds needed for *Emergency Repairs* are immediately released from “Repairs and Renovation Fund” on the basis of a decision of the Managing Board (the Manager).

If the “Repairs and Renovation Fund” does not have funds or the funds are insufficient the Chairman of the Managing Board (or the Manager) immediately convenes the General Meeting of the Owners.

(iii) Intervention of the Mayor

If the General Meeting is not convened or a decision of the General Meeting is not taken the Chairman of the Managing Board (the Manager) and the interested parties inform the Mayor.

The Mayor conducts an inspection and issues an order obligating the Owners to carry out the Repairs.

(4) Consumables and Costs for Current Maintenance of Common Parts

(i) Decision

The General Meeting of the Owners decides on the amount of installments that are to be made by the Owners for the purposes of covering the consumables and the costs for Current Maintenance of Common Parts. (Please note that the costs for retaining a doorman are deemed fall into this category.)

The term “*consumables*” is defined as encompassing the expenses for:

- Lightening;
- Cleaning;
- Elevator and
- Other necessary expensed for maintenance of the common parts.

(ii) Equal bearing of Costs

The costs for consumables and the costs for current Maintenance of Common Parts are born equally in accordance with the number of the Owners and Inhabitants.

(iii) Exempt from Costs

Exempt from payment of the costs for consumables and the costs for current Maintenance of Common Parts are:

- Children up to 6 years of age;
- Inhabitants (e.g. people renting premises) staying less than a month in the building.

(iv) Costs of Consumables in case of Absence

Owner (or Inhabitant) who is absent for more than a month pays only half of costs of the consumables. The absence is to be notified to the Managing Board or the Manager.

(v) Costs of Consumable in case of Activity in the Building

Owners (or inhabitants) who exercise profession or activity requiring more intensive access of people to the building than the customary one pay consumables of up to 5 (five) times the amount.

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(vi) Costs of Consumable for Owner Premises that are not Residential

Owners (or inhabitants) having shops, restaurants, production, commercial or other premises of non-residential destination pay consumables of up to 5 (five) times the amount.

(vii) Costs of Consumable for Owners of Animals

Owners (or Inhabitants) breeding animals in the building that need to be taken out for walks pay consumables for each animal as for one Owner.

(viii) Amount

The amount due by each Owner and Inhabitant is determined by the General Meeting of the Owners.

(ix) Payment

The costs are contributed by the Owners on a monthly basis.

VI. TECHNICAL PASSPORT OF BUILDINGS

(1) Nature

Each building needs to have a Technical Passport issued in compliance with the Zoning Act.

(2) Storage

The Chairman of the Managing Board (the Manager) is obligated to keep the Technical Passport.

(3) Terms for Preparation

The technical passport is issued for:

- Newly constructed buildings – before the grant of the usage permit;
- Capital repairs, restructuring and capital renovations – within 6 (six) months of completion;
- **Important (!)** – All existing buildings which as at the date 1st May 2009 are already into exploitation – **by 31 December 2012**.

(4) Measures and Instructions per the Technical Passport

The measures and instructions prescribed in the Technical Passport are obligatory for the Owners. The Mayor exercises control in monitoring the performance of the measures and instructions per the Technical Passport.

VII. CLOSE TYPE RESIDENTIAL COMPLEXES

For the first time the Bulgarian legislation attempts to create a definition and some kind of regulatory framework for the so-called closed-type residential complexes (sometimes known as: “gated type residential complexes; “compounds”).

(i) Definition of Term

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The term “*closed-type residential complex*” is defined as a complex with restricted access positioned in a separate regulated land property in which buildings with common parts and other objects servicing the owners are constructed.

It is important to mention that the management of common parts in such closed-type residential complexes is to be agreed in a contract between the investor and the owners.

The contract has be concluded before a notary office and registered in the real estate registry.

Lastly, we would note that the new regulation on such enclosures of residences and other buildings although very necessary is likely to raise more questions than provide answers to pending issues.

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