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The Effects of the Termination of Marriage on the Rights of the Spouses to the Residential Premises in the Housing Cooperative. Selected Issues Regarding the Cooperative Ownership Right to the Premises and the Cooperative Housing Tenancy Right to the Residential Premises

Abstract

Selected issues concerning the effects of the termination of the marriage due to the death of one of the spouses and in the case of a divorce decree on the rights of the spouses to housing in terms of the cooperative right to ownership of housing and the cooperative tenancy right to housing are analyzed. The considerations made relate mainly to issues specific to these rights under the Law on housing cooperatives.

KEY WORDS: termination of marriage, divorce, death of a spouse, cooperative ownership right to the premises, cooperative housing tenancy right to the residential premises

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1 | Introduction

One of the basic principles of Polish family law is the permanence of marriage and the equality of spouses^[1]. However, the legislator has provided in the Family and Guardianship Code^[2] the grounds for termination of marriage, including dissolution of marriage by divorce, death of one of the spouses^[3], recognition of the death of one of the spouses and annulment of marriage. Like the conclusion of marriage, the termination of marriage has a number of implications not only in family law, but also in other areas of law. It has a significant impact on the legal situation of the spouses with regard to their rights to the home they lived in during the marriage.

Among other things, spouses are obliged to live together, which consists of their spiritual, physical and economic union, which enables them to fulfill the basic functions of marriage^[4]. The dwelling they occupy, therefore, has a very important function, since it is here that they manage their joint household, fulfill the obligations imposed by the law and satisfy their housing needs^[5]. In order to use the property, the spouses (or one of them) must have a legal title to the property. The nature of the various cooperative housing rights held by the spouses can vary greatly. Some are rights in rem with *erga omnes* effect (e.g., cooperative ownership right to the premises constituting a limited right *in rem*), while others are rights of a contractual nature (e.g., cooperative housing tenancy right to the residential premises). The analysis of the impact dissolution of the marriage on the rights of the spouses to the cooperative housing requires an examination of the legal situation of the beneficiaries not only during the marriage, but also before and after the dissolution. Issues such as the property regime that united the spouses, the nature and legal construction of such title, or which spouse

¹ Order of the SA in Katowice of 20.08.2009, I ACa 410/09, LEX No. 551997.

² Law of 25.02.1964 Family and Guardianship Code (i.e., Journal of Laws of 2023, item 2809, as amended) – hereinafter the Family and Guardianship Code.

³ The Family Law Code does not *expressly* indicate the death of one of the spouses as a reason for the cessation of marriage, but such an effect is indisputable due to the fact that a person ceases to be a subject of rights and obligations upon death; see, among others, Jerzy Ignatowicz, Mirosław Nazar, *Prawo rodzinne* (Warsaw: Wolters Kluwer, 2016), 380.

⁴ See more extensively Mariusz Frasz, „art. 23 k.r.o.”, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. Mariusz Frasz, Magdalena Habdas (Warsaw: Wolters Kluwer, 2021), 147.

⁵ See Elizabeth Koszel, *Prawa rodziny do mieszkania spółdzielczego* (Lex 2012), Introduction.

is a party to the legal relationship in question that entitles them to use the premises, have a fundamental impact.

The subject of this art. are selected issues concerning the effects of the termination of the marriage due to the death of one of the spouses and in the case of a divorce on the rights of the spouses to a housing unit in a housing cooperative. It should be noted that the issues mentioned are extremely extensive, but due to the framework of the art., the analysis was made specific issues of the Law on housing cooperatives (l.h.c.)^[6] for two legal titles to housing – cooperative ownership right to housing and cooperative tenant right to housing.

2 | Termination of marriage due to death of one spouse

As already mentioned, the death of a person results in the cessation of his rights and obligations, which, among other things, results in the termination of the marriage. In the event of the death of the individual who had the cooperative ownership right to the premises, this right passes to the heirs (Article 17² para. 2 sentence 1 of the l.h.c.). In the context of inheritance of this right, the general regulations of inheritance law – the provisions of Book Four of the Civil Code^[7] are applicable^[8]. It is subject to both testamentary and statutory inheritance. If the cooperative ownership right to premises was vested in both spouses (it was included in the joint property or fractional joint property), then only the share in this right falling to the deceased spouse will enter the inheritance estate. The surviving spouse retains the share previously belonging to him. If, on the other hand, the right in question belonged only to the deceased spouse, it will be inherited in its entirety.

⁶ Law of 15.12.2000 on housing cooperatives (i.e. Journal of Laws of 2023, item 438, as amended) – hereinafter l.h.c.

⁷ Law of 23.04.1964 Civil Code (i.e. Journal of Laws 2023, item 1610, as amended) – hereinafter Civil Code.

⁸ Katarzyna Królikowska, „art. 17⁹ u.s.m”, [in:] *Ustawa o spółdzielniach mieszkaniowych. Komentarz*, ed. Bogusław Lackoroński (Legalis, 2023).

It is possible that the surviving spouse will not be appointed to the estate and will not have a right to occupy the premises. For the protection of the cooperative ownership right to the premises, as a limited right in rem, the provisions on the protection of property (Article 251 of the Civil Code in conjunction with Article 244 § 1 of the Civil Code) apply accordingly. Thus, the entitled party (the heir of the deceased spouse) will be able to file an action for vindication under Article 222 § 1 of the Civil Code against the person who actually uses the thing. However, the legislator has ensured that the relatives of the deceased may use such property. Pursuant to the first sentence of Article 923 § 1 of the Civil Code, the spouse and other relatives of the deceased who lived with the deceased until the date of his death have the right to use the apartment and household furnishings to the present extent for a period of three months from the opening of the inheritance proceedings. It should be emphasized that this right is common to all housing titles. As stated in the literature, it is a minimum protection for the surviving spouse and other relatives, consisting in the possibility of temporary use of the family home. This is the time for the designated persons to take steps to find other housing to meet their housing needs^[9].

Since the cooperative ownership right to premises is hereditary and is a multi-heir right, this right can be acquired by more than one heir. This also applies in the case where one of the heirs is the surviving spouse who inherits a share in the cooperative ownership right to the premises jointly with another heir or heirs^[10]. In the current state of the law, this issue is regulated by Article 17^o l.h.c. This provision stipulates that if the aforementioned limited right *in rem* has been transferred to several heirs, they are obliged, within one year from the date of the opening of the inheritance (death of the testator), to appoint one of their number to carry out the legal acts related to the exercise of this right (including the conclusion of a contract on behalf of the heirs for the transfer of ownership of the premises). In the event of ineffective expiration of this period the court will appoint a representative at the request of the heirs or the cooperative in a non-trial procedure. As indicated in the literature, the order for the appropriate application of Article 17^o, paragraph 1 of l.h.c. (expressed in Art. 17^o, para. 2 of the l.h.c.) in the case of the death of one of the spouses who jointly held the cooperative ownership right to the premises means that the representative should represent all the beneficiaries of this right.

⁹ See further Koszel, *Prawa rodziny do mieszkania spółdzielczego*, Chapter VIII, 8.1.

¹⁰ Królikowska, „art. 17^o u.s.m”.

This includes both the spouse who has retained his share in the cooperative ownership right to the premises and the heirs who have inherited part of the share of the deceased spouse^[11].

It should also be mentioned that the cooperative ownership right to an apartment may be held by several entities, but membership in a cooperative is generally individual. According to Article 3(2) of the l.h.c., an exception applies only to spouses, if they are jointly entitled to the premises. In light of the above, if there are several heirs entitled to the cooperative ownership right to the premises, then the person who will become a member of the cooperative must be chosen^[12]. Pursuant to Article 3, paragraph 5 of the l.h.c., in the event of a dispute and the appearance of several entitled persons, the court shall decide in non-trial proceedings. After the expiration of the time limit set by the cooperative for the application to the court, which may not exceed twelve months, the choice shall be made by the housing cooperative. Pending the settlement or the choice made by the cooperative, the entitled persons may appoint a representative from among their number to exercise the rights of membership in the cooperative.

It should be noted that according to the l.h.c., the situation of a spouse in the case of inheritance of a cooperative ownership right to premises (or a share in it) is not more favorable than that of other heirs. If the indicated title to the premises was held jointly by the spouses, upon the death of one of them, the surviving spouse is entitled to his original share plus the share acquired through inheritance. If the right belonged only to the deceased spouse, it will be included in the estate in its entirety. All heirs who acquired the cooperative ownership right to the premises by inheritance are entitled to use the entire property^[13]. The legislator did not specify the obligation to divide the inheritance^[14], but each of the heirs may claim the abolition of the fractional community of the cooperative ownership right to the premises under the provisions on the abolition of ownership. The surviving spouse may claim the distribution of the designated limited right *in rem* in proceedings on the division of joint property and the division of the estate^[15]. In addition, as mentioned above, pursuant

¹¹ Ibidem.

¹² Anna Sylwestrzak, *Pełnomocnictwo. Komentarz* (Warsaw: Wolters Kluwer, 2020), 215.

¹³ Koszel, *Prawa rodziny do mieszkania spółdzielczego*, Chapter VIII, 8.3.2.

¹⁴ See the judgment of the CT of May 21, 2001, SK 15/00, OTK 2001 No. 4, item 85.

¹⁵ Roman Dzięczek, *Spółdzielnie mieszkaniowe. Komentarz. Wzory pozwów i wniosków sądowych* (Warsaw: Wolters Kluwer, 2018), 359.

to Article 222 paragraph 1 in conjunction with Article 251 of the Civil Code the beneficiaries of a cooperative ownership right to premises have a claim against the person who is actually in possession of the property (taking into account the protection of the spouse and relatives under Article 923 of the Civil Code). Pursuant to Article 1029 § 1 of the Civil Code, heirs are also entitled to file a lawsuit to claim the inheritance as a whole^[16].

The issues related to the termination of the marriage due to the death of one of the spouses in the context of the cooperative tenancy right to the residential premises are quite different from those of the cooperative ownership right. This right is non-transferable, does not pass to heirs and is not subject to execution (Art. 9, para. 3 of the l.h.c.). In the event of the death of the holder of this right, it does not enter the estate and does not pass to the heirs. Pursuant to Article 9(5) of the l.h.c., it may belong to a single person or to spouses. In order to protect the surviving spouse and, at the same time, the family founded by the spouses, the legislator introduced into the legal order a detailed regulation on the existence of cooperative tenancy right to the residential premises in the event of the death of one of the spouses. Pursuant to Article 14 (1) of the l.h.c., if the right was held by both spouses, it does not expire in such a situation, but is transferred to the other spouse. This means that the spouse after the deceased spouse the spouse acquires *ex lege* a share in this right (together with the associated housing contribution), so he acquires full rights to the premises^[17]. As pointed out in the literature, the right of both spouses mentioned in the provision should be understood as the existence between the spouses of a joint community in cooperative tenancy right to the residential premises, and not a community in fractional parts^[18]. Upon acquiring this right, the surviving spouse (if not previously a member of the cooperative) acquires simultaneously membership in the housing cooperative^[19]. It should also be noted that a separate issue from the acquisition of the cooperative right to the residential premises is the housing contribution, which is subject to inheritance. The heirs of a deceased spouse are entitled to a claim for payment of a certain sum for the corresponding part of the housing

¹⁶ Królikowska, „art. 17^o u.s.m”.

¹⁷ Katarzyna Królikowska, „art. 14 u.s.m”, [in:] *Ustawa o spółdzielniach mieszkaniowych. Komentarz*, ed. Bogusław Lackoroński (Legalis, 2023).

¹⁸ Ibidem.

¹⁹ See in more detail Ewa Bończak-Kucharczyk, *Housing Cooperatives. Commentary* (Lex, 2018), Art. 14 l.h.c.; Królikowska, „art. 14 u.s.m”.

contribution^[20] against the spouse to whom the cooperative tenancy right to the residential premises fell^[21].

As mentioned above, Article 14(1) of the l.h.c. is applicable only if the cooperative housing tenancy right to the residential premises belonged to both spouses. If only the deceased spouse was entitled to this right, or if both spouses were entitled to it on the basis of fractional ownership, the above provision does not apply. Consequently, the right is extinguished, and the surviving spouse is not entitled to the property. In such a situation, Article 15 of the l.h.c. is applicable. According to paragraph 1 of this provision, in the case of expiration of cooperative housing tenancy right to the residential premises, inter alia, as a result of the death of the entitled person, the relatives^[22] of the deceased have a right to conclude an agreement for the establishment of a cooperative housing tenancy right to the residential premises. The agreement is concluded under the terms of the existing agreement on the establishment of this right (Art. 15 sec. 2¹ l.h.c.). Accordingly, the spouse of a deceased beneficiary, so to speak, “compete” with other relatives in this respect. In the light of Article 15 paragraph 4 of the l.h.c., in order to preserve the above-mentioned rights, it is necessary to submit, within one year^[23] from the death of the entitled person^[24], written assurances of the willingness to conclude a contract for the establishment of this right. If there is more than one rightful claimant, the court shall decide in a non-trial settlement. The court takes into account,

²⁰ Judgment of the Gliwice District Court of 10.04.2018, III Ca 1623/17, Legalis no. 2030957; Judgment of the Supreme Court of 13.05.2009, IV CSK 19/09, Cooperative Monitor 2010, no. 4, items 28-30.

²¹ On the eligibility of heirs to inherit the right to a housing contribution made by a deceased spouse, see more extensively: Królikowska, „art. 14 u.s.m” (Legalis, 2023).

²² Pursuant to the legal definition in Article 2(5) of the Housing Cooperatives Act, a close relative within the meaning of the Housing Cooperatives Act is a descendant, ascendant, sibling, sibling’s children, spouse, adoptee and adopted person, as well as a person who is actually in common life.

²³ As indicated in the judgment of the SA in Warsaw on 17.06. 2015. (I A Ca 1357/14, LEX No. 1768736): „The time limit for assertion of claims referred to in Article 15(4) of the A.s.m. is a substantive law time limit, known as a lapse period”. However, it is permissible to apply Article 5 of the Civil Code to the evaluation of the charge of the cooperative caused by the consequences of failure to meet the deadline of Article 15, paragraph 4 of the l.h.c. – so: judgment of the Supreme Court of 28.02.2017, I CSK 93/16, Legalis No. 1637546.

²⁴ See: judgment of the Supreme Court of 30.10.2008, II CSK 237/08, LEX No. 490934.

in particular, whether the person entitled to conclude the agreement lived with the deceased cooperative member (deceased spouse). However, after the unsuccessful expiration of the deadline set by the cooperative for going to court, the choice is made by the housing cooperative. In the event that the claim was decided by the court, the persons who remained in the dispute are obliged to immediately notify the cooperative of to whom the cooperative tenancy right to housing fell. Until such notification, the persons in dispute are jointly and severally liable for the fees referred to Article 4 (1) of the l.h.c.^[25].

3 | Termination of marriage as a result of divorce

As mentioned above, a marriage is terminated by divorce when there is a complete and permanent dissolution of the marriage between the spouses. A divorce has a number of consequences with regard to the former spouses' right to a cooperative housing unit, which may have belonged to both spouses or only to one of them.

With regard to the cooperative ownership right to premises, the legislator did not stipulate in the l.h.c. that the former spouses must take any actions. As in the case of ownership, if the right was held jointly by the spouses on the basis of joint ownership (it was a part of the joint property), it is transformed into a joint right on the basis of fractional joint ownership after the divorce decree. Problems concerning the division of the joint property of the spouses or the division of their joint apartment due to the framework of the article have not been considered.

Due to the nature of the cooperative tenancy right to the residential premises, in the event of the cessation of marriage due to divorce, the legislator imposed additional obligations on the spouses. Pursuant to Article 13 of the l.h.c., in such a case, the former spouses are obliged to inform the cooperative which of them holds the aforementioned right to the premises. Until the notification, the former spouses are jointly and severally liable for the maintenance fees. It should be emphasized that the indicated obligation exists only if the right was enjoyed by both former spouses during the

²⁵ See more extensively: Katarzyna Królikowska, „art. 15 u.s.m”, [in:] *Ustawa o spółdzielniach mieszkaniowych. Komentarz*, ed. Bogusław Lackoroński (Legalis, 2023).

marriage jointly, and therefore, if it is necessary to divide the joint property after the cessation of the marriage. The provision of Article 13 l.h.c. is also inapplicable when the spouses had a system of property separation, and the cooperative tenancy right to the residential premises was vested exclusively in one of the spouses^[26]. The obligation to notify the cooperative is a consequence of the principle of single subjectivity of the analyzed right to the premises – it can belong to one person or to spouses (Art. 9 para. 5 of the l.h.c.). However, the cessation of a marriage through its dissolution by divorce does not entail the termination of the membership of the former spouses in the housing cooperative. As long as the former spouses do not divide the community of property (including the cooperative tenancy right to the residential premises), they do not lose their membership in the cooperative^[27]. At the same time, the legislation does not set a deadline for the divorced spouses to divide the community property, nor does it set a deadline for notifying the cooperative about which of the former spouses has the cooperative tenancy right to the residential premises^[28]. After the dissolution of the marriage (from the moment of the termination of the community of property), the former spouses are still jointly entitled to the cooperative tenancy right to the housing premises, but no longer on the basis of community of property, but on the basis of fractional community of property. Therefore, it is necessary to divide the joint property, and at the same time the analyzed right to the premises, in order to award this right to one of the former spouses. This is tantamount to the loss of the right of the other former spouse and, at the same time, to the termination *ex lege* of his membership in the housing cooperative^[29]. The Supreme Court also took an analogous position, stating that: “As long as the joint cooperative right to the premises has not been divided or has not expired in accordance with the law, or has not been rendered invalidated by the statute of limitations, both divorced spouses are entitled to it, and the mere abandonment of the premises and non-residence therein by one of the divorced spouses cannot be equated with the loss of the right”^[30]. If the death of one of the

²⁶ Katarzyna Królikowska, „art. 13 u.s.m”, [in:] *Ustawa o spółdzielniach mieszkaniowych. Komentarz*, ed. Bogusław Lackoroński (Legalis 2023).

²⁷ *Ibidem*.

²⁸ Adam Stefaniak, *Prawo spółdzielcze. Ustawa o spółdzielniach mieszkaniowych* (Warsaw: Wolters Kluwer, 2018), 451.

²⁹ Królikowska, „art. 13 u.s.m”.

³⁰ Cited: decision of the Supreme Court of 15.02.2019, III CSK 50/17, LEX No. 2621156.

former spouses occurs after the termination of the marriage as a result of divorce, the former surviving spouse remains entitled to the cooperative tenancy right to the residential premises under Article 14 of the l.h.c.^[31]. In addition, the subsequent spouse of the deceased, despite remaining in the premises, does not acquire an independent right to conclude a contract for the establishment of a cooperative tenancy right to a premises^[32].

It is also necessary to mention the situation in which the cooperative tenancy right to a premises (this also applies to the cooperative ownership right to the premises) was vested exclusively in one of the spouses during the marriage was exclusively vested in one of the spouses within the framework of a divorce court decision on the use of the apartment, as well as a decision on the eviction of one of the spouses. During the marriage, a spouse who does not have legal title to the apartment may use the apartment to which the other spouse has legal title on the basis of the so-called family right to the apartment (Article 28¹ Family and Guardianship Code). Pursuant to the first sentence of Article 58 para. 2 of the Family and Guardianship Code, in a divorce judgment the court shall also decide on the use of the apartment during the period of cohabitation of the divorced spouses. According to the established jurisprudence, a divorced spouse who does not have the legal title to the premises for the use of a separate part of a jointly occupied apartment does not constitute an effective objection that nullifies the demand of the other spouse under the disposition of Article 222 paragraph 1 of the Family and Guardianship Code.^[33] Exceptionally, when one of the spouses by his grossly reprehensible conduct prevents cohabitation, the court may order his eviction at the request of the other spouse. (Article 58 para. 2 sentence 2 of the Civil Code). Again, the jurisprudence indicates that the eviction of a spouse cannot be ordered if he or she has a cooperative tenancy right to a residential premises, which is his personal property^[34].

³¹ Królikowska, „art. 13 u.s.m”.

³² Order of the Supreme Court of 15.02.2019, III CSK 50/17; See Adam Bieranowski, „Zakres podmiotowy spółdzielczego lokatorskiego prawa do lokalu mieszkalnego w razie ustania małżeństwa a dopuszczalność i konfiguracje uwłaszczenia - uwagi na kanwie postanowienia Sądu Okręgowego w Suwałkach - I Wydział Cywilny z 20.10.2020 r., I Cz 231/20” *Rejent*, No. 2 (2021): 97-108 and the postulate made there *de lege ferenda* to amend the regulation of the Act on housing cooperatives.

³³ This is the case, among others, in the judgment of the SA in Gdansk of 25.02.2011, I ACa 928/10, LEX No. 936510.

³⁴ Such as, among others, the resolution of the Supreme Court of 23.07.2008, III CZP 73/08, LEX No. 408414, the judgment of the Supreme Court of 26.01.1998, III CKU 32/97, LEX No. 3223191.

4 | Summary

The selected issues presented above show that the cessation of the marriage, as a result of the death of one of the spouses and as a result of a divorce decree, gives rise to a series of serious consequences in the area of the rights of the spouses rights withig the housing cooperative. These consequences are varied and depend on the title to the premises to which the beneficiaries were entitled and whether it was held jointly by both spouses and only by one of them.

In the event of the death of one spouse, the other spouse may inherit the cooperative ownership right to the premises or a share in this right. It is also possible for this right to pass to several heirs. If the surviving spouse did not dispose of this property right and is not an heir, the l.h.c. does not provide any additional protection for such a person. However, an eligible person may dispose of his cooperative ownership right to the premises during his lifetime (whether by will or by a legacy bequest). In the case of a cooperative tenancy right to the residential premises, the legislator has introduced several special solutions. If the right was held jointly by spouses, then upon the death of one of them, it passes to the other spouse. Such a construction undoubtedly serves to protect the surviving spouse, as well as to protect the welfare of the family that the spouses have created through their union. If, on the other hand, the tenancy right belonged exclusively to the deceased spouse or to both spouses on the basis of fractional ownership, the right is extinguished upon death and the next of kin (including the surviving spouse) is entitled to conclude a contract for the establishment of a cooperative tenancy right to the residential premises. As noted in the literature^[35], such a solution may raise objections, and it is proposed to modify it by adopting the construction of entry into the legal relationship of a circle of relatives (thus, a solution similar to that in the situation of the death of a tenant).

If the marriage is terminated by divorce, the cooperative ownership right to premises, if it was part of the community property, is subject to division. The l.h.c. does not provide for any special rules in this regard. With respect to the cooperative tenancy right to the residential premises, the legislator imposed an obligation on former spouses who held the right jointly to notify the cooperative to whom the right belonged. I If the former spouses do not divide the joint property and one of them dies, the

³⁵ See Koszel, *Prawa rodziny do mieszkania spółdzielczego*, Chapter VIII, 8.6.

surviving former spouse is entitled to the right cooperative tenancy right to the residential premises. Such a solution may give rise to objections, especially when a subsequent spouse of the deceased uses the premises subject to this cooperative tenancy right, and does not acquire an independent right to conclude a contract for the establishment of a cooperative tenancy right in his favor.

It should be noted that the changes made so far in the l.h.c. have largely positively affected the situation of spouses (and former spouses) who use premises in a housing cooperative. Nevertheless, in view of the constitutional need to protect the family, there are still areas where appropriate changes are needed.

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