

Transformation of Land Perpetual Usufruct in Ownership Right in Poland

Sabina ŻRÓBEK, Ryszard ŻRÓBEK
University of Warmia and Mazury in Olsztyn, Poland

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SUMMARY

In the article some information about system of perpetual usufruct in Poland are presented. It is a particular form of public real estate management and is defined by law (the Civil Code and the Real Estate Act) and has its specific features in Poland. Since 2005 it is possible to transform this right to real estate ownership. In this case valuation of ground (market value of land) is necessary.

The right of land perpetual usufruct has been existing in Poland since 1961. This is a form of transferring public land to temporary use with annual charges. Nowadays land perpetual usufruct concerns approximately 400 thousand hectares in Poland. It is possible to transform land perpetual usufruct into full ownership of the land. The authors of this article presented the procedures of this change. They concentrated in particular on legal issues and methods of land valuation. Moreover, authors described land perpetual usufruct in relation to long term leasing in other countries.

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1. INTRODUCTION

The long – term ground usufruct (land usufruct hold) is a type of interest in real estate property (ground).

This form in Poland is known as perpetual usufruct. It is the right to use and administer land owned by the state or local authorities under the terms and conditions of a contract for ninety-nine years. Exceptionally the period can be shorter but minimum forty years, depending on the destination of the ground. The holder of such right is obliged to pay during the term of perpetual usufruct an annual fee estimated by the state or local authority.

Legally, in perpetual usufruct grounds and buildings are considered as two separate properties:

- 1) GROUND – property owned by the state or local authorities,
- 2) BUILDING – property owned by the user.

There are also situations when the adoption of public usufruct hold is perceived as an intermediate step toward ownership. Land property can be treated as a bundle of rights. Public usufruct can be treated as a system that allows government and private parties to negotiate the delineation and assignment of multiple land rights through contractual arrangements (Bourassa, 2003).

2. PERPETUAL USUFRUCT IN POLAND

Perpetual usufruct is a particular form of public real estate management (Żróbek, et al., 2006). It can be characterised by the fact that both the ground and the building erected on it are the property of different entities. Only the Treasury or units (gmina, powiat, and województwo) of local government can grant the perpetual usufruct. Nowadays, about 400 thousand of hectares of land in Poland are in “perpetual usufruct”.

Since 1990, when the transition started, this form of ground possession has been brought up for discussion both in political and legislative fields.

Law defines perpetual usufruct in:

- 1) The Civil Code (1964);
- 2) The Real Estate Act (1997).

The theoretical notion of the usufruct is embodied in Civil Code. The Real Estate Act regulates that the state and local authorities should execute this right. Some leasing features are presented in table 1.

Table 1.
Features of perpetual usufruct in Poland

Features	Description
Term of usufruct	99 years (minimum 40 years in some cases)
Right of renewal	yes – for next 99 years – according to the lessor no – state or local government needs land for public purposes
Ownership of land improvements	Lessee owns land improvements under separate ownership
Usufruct fees	1) first fee: amounts to 15 - 25% of the land value 2) annual ground rent depends on land use (land price on market value): a) 0,3% for infrastructure b) 1% for housing c) 2% for recreation d) 3% and more for other
Transferability of land right	No restriction on transferring usufruct rights

In 2005 appeared The Act concerning transforming the law of perpetual usufruct into ownership right for selected categories of perpetual usufruct users, who apply with proper documents until 31 December 2012. Transformation is for payment and the amount can be estimated using the formula:

$$KP = W_{wL} - W_{uW} \quad (1)$$

where:

W_{wL} – market value of land evaluated by the valuer

W_{uW} – value of right to perpetual usufruct, which is estimated using the formula:

$$W_{uW} = W_{wL} \cdot K \quad (2)$$

where:

K – reduction coefficient for perpetual usufruct right

$$K = \left(1 - \frac{S_r}{R}\right) \cdot \frac{t}{T} + 0,25 \frac{T-t}{T} \quad (3)$$

where:

S_r – percent rate of annual fee (no more than 3%)

R – average capitalisation rate for real estate market estimated by valuer but fulfilling the condition: $0,09 \leq R \leq 0,12$

t – amount of years remained to use real estate by perpetual usufruct user

T – amount of contracted years of perpetual usufruct ($40 \leq T \leq 99$).

Formula 1 can be transformed using formula 2. Then:

$$KP = W_{wz} - W_{wz} \cdot K$$

and after transformation:

$$KP = W_{wz} (1 - K) \quad (4)$$

As it results from the above mentioned formula, the valuer estimates market value of land as the ownership right and describes average capitalisation rate from local real estate market. The payment for transforming right from perpetual usufruct into ownership can be decreased because of granted discount. The discount is usually 90% of this amount.

Not every perpetual usufruct user can demand transformation of their right into ownership. The Act determines that enabled to do such activity are only:

- private persons, who are in the day of introducing the Act the perpetual users of agricultural real estates and real estates developed or planned for housing purposes or garages, and their legal successors who are private persons as well;
- private and legal persons, who are the owners of premises and their share in the shared real estate includes right of perpetual usufruct;
- housing associations, which are the owners of residential buildings or garages.

In the last two cases legal successors of above mentioned subjects, both legal and private persons, are also enabled to demand transforming these rights. There is one exemption from the rule that perpetual users have to possess this right in the date of introducing the Act. It concerns private and legal persons, who gained the share in perpetual usufruct of the land together with acquiring the share in the shared real estate after it.

Transforming right for perpetual usufruct into ownership right is conducted through administrative decision of proper unit and is done when this decision becomes legal. The choice of proper unit depends on the real estate owner. If land belongs to The Treasury, the application should be directed to the **starosta**. If it belongs to the commune, it should be directed to wójt, burmistrz or the president of the city. If it belongs to other units of local authorities – to board of powiat or board of the province.

Act does not regulate the contents of the application form for transforming these rights, but it obviously should include: pointing the addressee of application (unit), the data on mover, date and signature, the symbol of real estate (the subject of perpetual usufruct) and such details as the sum of annual fee, the way of acquiring perpetual usufruct or pointing previous perpetual usufruct user. Some categories of perpetual users or their successors can be exempted from transformation fee:

- when they received perpetual usufruct for land dispossession or other ways of taking over land by The Treasury before 5 December 1990;
- when they received perpetual usufruct on the basis of article 7 of decree from 26 October 1945 on ownership and land use in the area of the city Warsaw (Dz. U. 50, poz. 279).

The rest of perpetual users can apply for the discounts and the decision depends on proper unit. The assent of wojewoda is necessary (in the case of state real estates) or proper local government (in the case of local authorities' real estates). Discounts can be applied only to agricultural real estates or others mentioned in article 68 in the Act on Real Estate Management, especially grounds planned for housing, technical infrastructure or other public purposes.

Perpetual users/real estate owners that benefit from the discount sometimes are obliged to return saved amount of money after proper valorisation. It concerns cases when real estate is sold in the period shorter than five years from the transformation to the person outside the closest family or when it is used in other way that it was contracted. As the closest family descendants, ascendants, siblings, children of siblings, spouse, adopted and adopting persons, and person that user share life with should be understood. Return of the discount can not be demanded from housing association in the case of setting separate ownership for its members nor from the owners of premises, that have their share in the perpetual usufruct right transformed into ownership right.

Act from 29 July 2005 on transforming the perpetual usufruct right into ownership right totally cancelled two previous acts that were bases for such transformations. One of them was the Act from 4 September 1997 on transforming the perpetual usufruct right into ownership right for private persons and the latter the Act from 26 July 2001 on acquiring ownership right by the perpetual usufruct users.

What is even more, the legislative unit decided, that to cases started on the base of regulations from these two acts, but not finished with final decision, the regulations from the new act should be applied. This solution can raise some reservations from conformity with the Constitution point of view. It is still possible to transform the perpetual usufruct right into ownership right according to the procedures written in the Act on Real Estate Management. In this case the assent of proper unit is necessary.

3. SUMMARY

Perpetual usufruct is specific form of public ground management in Poland. It was established in 1961 and then modified, especially in the field of the way of annual fee actualisation. Since 2005 there has been the possibility of transforming this right into ownership right according to the formula from the other act. The estimation of land ownership right and capitalisation rate for the real estate market is needed. It is estimated that until the end of 2012 about 80% of enabled persons will use this possibility of right transformation.

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BIOGRAPHICAL NOTES

Sabina ŻRÓBEK

Academic experience: Prof. Dr habil. Ing – Uniwersity of Warmia and Mazury in Olsztyn (Poland)

Head of Department of Land Management and Regional Development

Current position: University professor

Practical experience: land valuation, land registry, land information systems

International experience: expert of FAO organization (2002-2004)

Activities in home:

President of Polish Real Estate Scientific Society

Member of Polish Property Appraisal Association.

Ryszard ŻRÓBEK

Academic experience: Prof. Dr habil. Ing – Uniwersity of Warmia and Mazury in Olsztyn (Poland)

Current position: professor of University , Head of Pastgraduated Studies (Valuation and Real Estate Management)

Practical experience: real estate management, land information systems, real estate valuation.

International experience: expert of World Bank (1990-1992), expert of FAO Organization (2002-2004)

Activities in home:

Member, Polish Property Appraisal Association.

Member, Editorial Board of International Journal of Strategic Property Management.

CONTACTS

Prof. Sabina Żróbek
University of Warmia and Mazury in Olsztyn
10-725 Olsztyn
ul. Prawocheńskiego 15
Poland
Tel, +4889 5233663
Fax +4889 5233832
Email: zrobek@uwm.edu.pl
Web site: www.uwm.edu.pl

Prof. Ryszard Żróbek
University of Warmia and Mazury in Olsztyn
10-725 Olsztyn
ul. Prawocheńskiego 15
Poland
Tel, +4889 5234962
Fax +4889 5233832
Email: rzrobek@uwm.edu.pl
Web site: www.uwm.edu.pl