

The process of residential house administration in Latvia, problems and prospects for improvement

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1. Introduction

In the process of administration of residential houses, both administrators and apartment owners encounter various problems.

Acquiring a residential property, e.g. an apartment, its owner often does not fully understand how much it will be necessary to invest additionally in order to maintain their property in order.

One of the major problems faced by apartment owners in a residential building is the process of decision-making. In spite of the fact that the legislator has expanded the decision-making procedure by supplementing it with such methods as opinion collection or other form of mutual agreement, in practice, this did not resolve the given problem, but rather complicated it instead.

In the process of practical interaction between the administrator and subjects of administration, contradictions arise between rapidly changing needs of the owners and the means (possibilities) available to the administrator for their satisfaction. The legislative base falling behind the development of the process of residential house administration leads to the consequence that in many cases the actions of all subjects in the administration process detrimental to the property do not receive proper legal evaluation and remain unpunished, which fact contributes significantly to the continuation and expansion of these actions.

2. Legal support of interaction between residential house administrators, other legal subjects and third parties.

In the process of administration of residential houses, both administrators and apartment owners encounter various problems, e.g.:

1. differing views on residential house administration, low activity of apartment owners and their unwillingness to participate in management of their residential property;
2. insufficient knowledge and little available time on the part of apartment owners, interpersonal conflicts among owners, and between owners and administrators;
3. the content of accounts and the practice of charging for services;
4. insufficient resources and financial means;
5. insufficient information on the process of administration, and, as a result, incomplete understanding of one's rights and responsibilities;
6. the practice of debt recovery;
7. and many other questions.

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In spite of the fact that the legislator has expanded the procedure for making decisions and supplemented it by a possibility of opinion collection or other form of mutual agreement, in practice, this did not solve the given problem, but complicated it instead.

As a matter of fact, the procedure itself has not changed significantly, except that instead of holding a meeting, apartment owners simply go round the neighbors and offer to sign a decision, without even asking who is signing - the owner or just a tenant, the main thing is that the signature should be in the right column. In turn, the signatory is not always interested in trying to understand the essence of the matter, but just signs for the sake of signing.

As a result, such paradoxical situations occur when within the period of one month owners take part in TWO entirely different opinion collections, where proposed solutions not only contradict to each other, but in both cases owners vote “FOR” the adoption of these contradicting decisions by the majority vote.

1. The residential property owners conclude contracts with suppliers of municipal services on their own behalf. In this case, the administrator acts as an intermediary – he does not become the owner of the provided service, but participates in its rendering in the interests of the apartment owners.¹

2. The administrator is authorized by the owners to conclude contracts on their behalf.

3. The administrator acts as a person providing services and becomes the owner of a provided service, concluding contracts with public utility companies for the acquisition of the service. Situations when administrators conclude contracts with utility providers on their own behalf are the commonest. In this situation, the administrator, in fact, acts as a hidden deputy or undisclosed principal.²

1 Law of Republic of Latvia „Value Added Tax Law” // 29.11.2012. // Latvian Journal, Nr. 197 (4800), [Entry into force: 01.01.2013.], with amendments.

2 Torgans, K. „The Civil Law of the Republic of Latvia commentary. Related rights. // Riga: „My Property”, 2000 - page 579.

Concerning the procedure of decision-making, the author believes that it is possible to persuade owners to participate more actively in the management and maintenance of their residential property only with the help of administrative measures.

The norms allowing opinion collection or other forms of arrangements for reaching agreement should be removed from the law.

The general meeting should be the only form of reaching agreement and taking decisions providing that participation in general meetings is obligatory. If the owner cannot attend the general meeting, he must ensure the presence of an authorized person (the power of attorney can be issued by the owner himself, in the presence of two witnesses).

It is also necessary to introduce administrative responsibility for the owner for non-attendance of meetings and not ensuring the presence of an authorized person.

3. Administration and maintenance costs of residential houses, the procedure of settlement for consumed services.

The first and most important task of the administrator is to develop the budget of a residential house. This task is easier if all apartment owners pay administrative, maintenance and servicing expenses, etc. regularly and fully. As a rule, the administrator charges for the following:

1. labour costs of administrative staff and administration profit;
2. office expenses, filling out and execution of various documents, telecommunication expenses;
3. costs of office space maintenance;
4. labour costs of janitors and repairmen, costs of working clothes and low-value equipment; hired labour costs for repair and maintenance;
5. labour costs of various specialists such as plumbers, electricians and carpenters;
6. maintenance of adjacent territory and keeping it in good order (seasonal works, e.g. snow removal, sweeping, grass mowing, etc.);
7. flue system cleaning and its maintenance in good working condition;
8. fire alarm system and its maintenance in proper working condition;
9. transport services;
10. costs of emergency services and elimination of the consequences;
11. costs of banking services;
12. expenses related to legal services and debt recovery;
13. payment of taxes.

The author recommends to amend Section 6, Paragraph 3 of the Law on residential house administration, providing that other administrative activities are activities related to the administration of a residential house and are carried out according to the will and solvency of the owners, but if 75% of the apartment owners' consent is not obtained, charges for these other administrative activities may not exceed 10% of the minimum hourly rate adopted at the national level in the previous year per one square meter of the living space. This percentage will also cover expenses on the improvement and development of a residential building and activities related to the elaboration of a long term plan of measures necessary for this purpose.

4. Debt collection procedure for utility services, maintenance and administration

According to Section 10 of the Law on residential property, apartment owners are obliged:

- 1) to participate in the administration of their apartment house;
- 2) to cover the costs of administration of their apartment house;
- 3) to pay for the received services related to the use of their residential property such as heating, tap water, sewerage, household waste removal, etc. Also, according to Section 13 of the same Law, the apartment owner according to the part of the residential property that constitutes his apartment and adjacent premises in joint use, and according to the joint decision of the community of apartment owners, should cover expenses for the provision of obligatory activities as a part of the residential house administrative activities and also for the remuneration of the administrator's services also determined by the community of the apartment owners, if such remuneration is provided for in the residential house administration contract. These are obligations of the apartment owner, regardless of whether he has signed the contract or not.

The most difficult part in the process of administration is to engage the apartment owners - non-payers in the said process and make them pay for the received services.

In order to improve legislation and accelerate the process of collecting debts, it is legally necessary and justified to establish in the law an alternative procedure for the collection of debts for obligatory administration services in the pre-trial order, in turn, providing that debts for optional services are only recoverable in court.

5. Problems related to transferring the obligations of owners to a new administrator and ways of solution. Legal regulation of the scope and content of transferred obligations arising from the administration contract

In real life, on numerous occasions controversies arise between apartment owners and administrators concerning:

- whether the debt of the residential house owners to the administrator and utility providers remains as financial “obligations of the owners acquired as a result of the administration task”, “other obligations”, or becomes “obligation that is not transferred to the owners but remains with the administrator”?
- Should the unpaid balance to the third parties be transferred, in the case where the administrator concludes contracts with utility providers on his own behalf acting as a hidden deputy?

Following the provisions of the LR *Law on Administration of Residential Houses*, it can be seen that in the event of a dispute between the apartment owners and the administrator on the subject of transfer of obligations and things, the legislator determined as a duty of the parties to draw up a protocol of dispute, indicating their opinions and justifications. But in real life, the administrators often have to recover the costs and expenses incurred in the process of administration for a rather long time after the termination of the legal relations of administration.

6. Conclusion

Summarizing the above, it should be noted that: In spite of the fact that the legislator has expanded the decision-making procedure by supplementing it with such methods as opinion collection or other form of mutual agreement, in practice, this did not resolve the given problem, but rather complicated it instead.

- Utility services suppliers reasonably demand that the decision to appoint a new administrator should be taken by 2/3 of the total number of owners, and the provisions of Article 17 (9) of the Law on residential property in relation to commissioning the administrator with the task to perform managerial actions and withdrawal of such commission, are declarative, challenged in court, and not applicable in practice.

- the provision of the Law on residential property, namely, Article 17(9) would be appropriate if the concepts of “administration” and “maintenance / housekeeping” were separated in the Law on residential house administration with regard to assignment the task of “maintenance / housekeeping” actions to a person who services a residential house, but is not its administrator, and the revocation of such assignment;

- because of the imperfection of the declaration of intent in court decisions, the residential house administrators hesitate to sue immediately, which is maliciously exploited by persistent and deliberate non payers.

Having assessed the existing situation, and for further improvement of legislation on administration of residential houses, it seems legally necessary to undertake the following actions at the legislative level:

1. The participation in the general meeting of the apartment owners should be made statutory. In case of impossibility to attend, the owner is obliged to ensure the presence of an authorized person (the power of attorney may be issued by the owner himself, in the presence of two witnesses).
2. For non-attendance of general meetings and not ensuring the presence of an authorized person administrative responsibility should be introduced for the owner.

Or accept the alternative version proposed and described in this article: to eliminate norms of the law allowing to collect opinions or reach mutual agreement in other forms of arrangements, but make legitimate only the general meeting as a form of reaching agreement with the quorum of 70% from the total number of owners.

3. to establish a maximum amount of payment for administration services proceeding from one square meter of living space, provided that this sum will also include administrator's remuneration and profit.

4. to establish that the amount of expenses for obligatory administrative actions (without utility bills) in a current year per one square meter should not exceed 35% of the national minimum hourly rate for the previous year, but the administrator's remuneration, together with the profit, may not exceed 20% of the total annual amount which the administrator charges for administration services (administration costs) per one square meter;

5. to establish a minimum percentage which will cover the expenses for obligatory activities;

6. to amend Section 6, Paragraph 3 of the Law on residential house administration, providing that other administrative activities are activities related to the management of a residential house and are carried out in accordance with the will and solvency of the residential property owners, but if 75% of the apartment owners' consent is not obtained, then it may not exceed 10% of the nationally calculated minimum hourly rate for the previous year per one square meter. This percentage will also cover measures for the improvement and development of a residential building and the activities related to the elaboration of a long-term plan of measures necessary for this purpose;

7. to establish an alternative procedure for the collection of debts for obligatory administration services in the pre-trial order, in turn, providing that debts for optional services should only be recovered in court.

Thank you for your attention