

Condominium Amendment Act 2022

Objectives

After almost 20 years, the Condominium Act (*Wohnungseigentumsgesetz*) is being amended again. It is clear from the ministerial draft that the focus of the amendment, which is due to enter into force on 1 January 2022, is placed entirely on climate protection.

To mitigate the impact of the climate change that has already occurred, the Condominium Act should also contain provisions that pursue the following objectives:

- (i) The improvement of the framework conditions for the installation of charging facilities for electric vehicles;
- (ii) The promotion of innovations, such as the construction of individual photovoltaic systems, designing condominiums to meet the needs of the disabled, etc.; and
- (iii) The establishment of optimised conditions for the preservation and improvement of buildings with regard to heat, climate and energy.

Changes to the Condominium Act

The proposal includes the following main changes to the Condominium Act:

- New provisions governing the right of condominium owners to make changes (Section 16 of the Condominium Act)
- Obligation of the property administrator to provide information (Section 20 para. 8 of the Condominium Act)
- Facilitating the decision-making process (Section 24 para. 4 of the Condominium Act)
- Setting a minimum amount for the reserve (Section 31 para. 1 of the Condominium Act)

New provisions governing the right of condominium owners to make changes (Section 16 of the Condominium Act)

It has hitherto been necessary to obtain the consent of all other condominium owners in the building before making changes to the condominium that could impair the legitimate interests of these other owners (Section 16 para. 2 of the Condominium Act). In future, it will be easier to make certain changes (e.g. the installation of e-charging facilities, photovoltaic systems, design changes for people with disabilities, sunshade solutions, and the installation of burglar-proof security doors) following the introduction of a fiction of consent. It is deemed sufficient if the other condominium owners have been informed of the planned measure and do not object to it. If they fail to object, they are deemed to have given their consent to the measure in question (Section 16 para. 5 of the Condominium Act). Since this fiction of consent is an exception to the principles enshrined in civil law, it does not apply to non-privileged measures. The procedure prescribed by law (qualified notification of the other owners; comprehensible description; period of two months for the submission of observations) must be observed.

Obligation of the property administrator to provide information (Section 20 para. 8 of the Condominium Act)

However, the fiction of consent described above is only applicable if the individual condominium owner also has the possibility of informing the other owners of one of the aforementioned climate-friendly changes. Accordingly, the administrator will in future be under an obligation to provide the names and addresses for service of the other condominium owners once the following

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conditions have been met (Section 20 para. 8 of the Condominium Act):

- The notification must be necessary;
- The condominium owner may use the data supplied exclusively for the aforementioned notification purposes;
- Email addresses may only be disclosed with the consent of the condominium owner concerned. In the event that the disclosure of certain addresses for service to a condominium owner is prohibited, service is to be effected to the alternative domestic address or email address.

Facilitating the decision-making process (Section 24 para. 4 of the Condominium Act)

It has often been the case in the past that individual condominium owners do not participate in the decision-making process. As a result, it has only been possible to carry out improvements if the majority of the condominium owners agreed to (calculated based on co-ownership shares). The decision-making process is made easier through the introduction of an additional option for adopting decisions. It is no longer the majority of the co-ownership shares that counts, but the majority of the votes cast. However, (i) at least 2/3 of the condominium owners who cast their vote must vote in favour of the decision (calculated based on co-ownership shares) and (ii) the votes in favour of the resolution must reach the threshold of at least 1/3 of all co-ownership shares.

Setting a minimum amount for the reserve (Section 31 para. 1 of the Condominium Act)

Provision was already made for the formation of an appropriate reserve to cover future expenses

(Section 31 para. 1 of the Condominium Act 2002). In future, the introduction of a statutory minimum allocation of EUR 0.90 per m² per month is intended to ensure that sufficient investment capital is available in the reserve to make it easier to carry out improvements and implement measures.

Conclusion

The Condominium Amendment Act 2022 is characterised by the goal of protecting the climate. The establishment of future charging facilities for electric vehicles as well as the creation of photovoltaic systems, for instance, has been simplified by making the adoption of decisions easier while preserving legitimate minority rights as well as implementing measures for the obligatory allocation of reserves. These changes can certainly be seen as a positive further development of the Condominium Act. However, it has not proven to be a much-promised comprehensive reform of the Condominium Act.

For more information

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