

## Pre-emption Right on the Wave!

In light of recent floods that have devastated many areas of Poland, the government urgently passed the so-called "Flood Special Act" on October 1, 2024, aiming to provide swift support to individuals and local governments affected by these tragic events. However, the regulations, introduced almost overnight, have sparked significant controversy. Experts warn that some of these new rulings may cause more issues than benefits, particularly the pre-emption right for real estate, which has been temporarily granted to municipalities (until April 30, 2025).

According to the new Article 27a of the Flood Act, municipalities impacted by the floods have been given the pre-emption right for residential premises or single-family residential buildings within their area. As stated in the justification for the Flood Act, this solution is intended as a temporary measure to facilitate housing assistance for those affected. Real estate acquired by municipalities in this way will expand their housing stock and, once rebuilt or renovated, will be rented to those in need. A significant drawback of this provision is that its immediate implementation has led to numerous issues for both sellers and notaries.

One of the main criticisms of the new pre-emption right is the lack of an appropriate *vacatio legis* - a transition period that would allow all interested parties to become informed about the new regulation and adequately prepare for the new requirements. The absence of this critical phase in the legislative process means that many people involved in real estate transactions may find themselves in a legally uncertain situation, and some sale agreements made without respecting the pre-emption right now risk invalidity.

The requirement to sign conditional sale agreements in areas subject to the pre-emption right may introduce chaos into the real estate market. For sellers, this represents an additional burden, especially since many already had preliminary agreements in place with buyers.

In practice, the new regulations mean that transactions in flood-affected areas will be prolonged, as municipalities will have a month to decide whether to exercise their pre-emption right. This process could significantly extend the waiting time to finalize sales, posing a serious challenge for both property owners and potential buyers. In some cases, it may also lead to the termination of pre-flood preliminary agreements, the need to return down payments, and ultimately the loss of interested buyers.

Will municipalities be willing to exercise their right? Given that many struggle with limited budgets and have difficulty providing basic services, this seems highly doubtful.

The sudden introduction of the pre-emption right in this form has undoubtedly caused surprise. The regulations were implemented without broader debate, which has turned the desire to provide assistance into a source of additional issues - now, support may be needed for those who, unaware of the new regulations, have entered into invalid real estate sale agreements. The question remains open as to whether these legislative changes, provide real support or merely add another obstacle for those affected.

**Do you want to know more? Contact us!**

Karolina Pacholska, Associate  
[karolina.pacholska@ngllegal.com](mailto:karolina.pacholska@ngllegal.com)

Katarzyna Duda, Legal Analyst  
[katarzyna.duda@ngllegal.com](mailto:katarzyna.duda@ngllegal.com)