

PUBLIC BUILDING MANAGERS IN TUZLA

INTRODUCTION IN THE FIELD OF BUILDING MANAGEMENT AND MAINTENANCE

Property management is the art of real estate management with the aim to preserve and increase the value of it. The real estate implicit the building and the belonging land. In the interest of better understanding for those who are not familiar with legal terms, in further text, and in the practice, the term 'building' presupposes also the belonging land. The legal concept of building management presumes the right of every leaseholder to make decisions on issues related to co-ownership, together with other leaseholders. **Maintenance of common areas, soft maintenance and building management is of a public interest!**

Building management is a combination of technique, economy, finances and law, in final. Direct participants in the process of management are leaseholders – condominium owners and Public building managers. Condominium owners take care and are accountable for their property, entrusting executive tasks to the public building manager who is, in this case, a taskmaster. The Law on Maintenance of Apartment Buildings and Common areas stipulates that every building/building entrance with more than four residential units must have a public building manager registered for that type of business. Public building manager runs the building, takes care of maintenance, collects service charges and conducts all other duties assigned by leaseholders. Public building manager works for and on behalf of condominium owners.

Leaseholders are, according to the law, a part of a leaseholders' community. This community obliges them, among other things, to take care of the whole property (including common areas, devices etc.). The source of income for all the activities of this community are the service charges. However, apart from financial base, for the qualitative management of the building it is necessary to have strong awareness on real estate property and rights and obligations arising from it.

Basic rules of conduct of leaseholders and other property users (tenants, leases) are stipulated in a House Rule Decision, and the inter-proprietary contract, and basic agreement which regulates mutual relations between leaseholders is a co-ownership agreement.

Legal basis for the management is the Law on Utilization, Management and Maintenance of Building Common Areas and Equipment which regulates the legal framework for the rights and obligations of leaseholders and condominium owners, as well as rights and obligations of condominium owners' committee and last, but not least important, rights and obligations of the public building manager.

This Law, together with bylaws, stipulates that it is required to pay 0,3 KM/m² per month for residential facility, for commercial facility 0,3 KM/m² per month and for the garage within the building 0,15 KM/m² as communal service charges for the whole building. From the income received from common parts maintenance service charges, mandatory costs are paid (such as insurance of common areas, or regular monthly elevator maintenance, stairwell cleaning), depending on the type of common areas maintenance and if it is about regular maintenance, or inevitable repairs, or urgent repairs. In exceptional cases, the amount of service charges can be

reduced, or increased upon the request, supported with valid explanation, of the public building manager, or voted by the majority of all condominium owners.

A person who acquired a tenancy right before 6 December 2000 and has not bought out an apartment, or any other part of the building, or if a person is using the apartment, or any other part of the building on the basis of the document issued by a relevant legal body, exercises all the rights and obligations which relate to condominium owner.

From the Law on Utilization, Management and Maintenance of Building Common Areas and Equipment stem two (2) basic agreements:

Co-ownership agreement is governing relations between leaseholders and obligations related to building management and utilization.

Building management agreement is governing the relationship between a leaseholder and a building public building manager.

Public building manager and authorized representative of a building or building entrance are two parties entitled to enter into the Agreement on Building Management. It is preceded by signing of co-ownership agreement, which is valid only if signed by leaseholders who are owners of more than 50% of building premises, i.e. when signed by the simple majority of owners, or in popular words, 51% of the total area of special parts of the building, as prescribed by the Law.

IMPORTANT: The right to sign the list of condominium owners / co-owners and thus the right to sign inter-proprietary agreements is entitled exclusively to owners of apartments, office space and garages belonging to the building. If someone signs on behalf of the condominium owner, who is absent at the moment, that person can sign only with enclosed power of attorney for signature.

Building owners are either individual owners of the real estate, or leaseholders. The real estate also includes a land and everything that is relatively permanently attached to it and is located on the ground level, below the level, or above the ground level. Fully regulated co-ownership relation with some property exists upon determination of the actual owner for each part of the property/building, or to be more precise, upon determination of the ownership of the building in whole and also determination of joint ownership. In order to determine that, it is necessary to condominium the building.

The term 'condominium owner' is a synonym for the owner of some specific part of the real estate. Specific part of the real estate can be, for example: apartment, office space, garage, parking spot, basement or any part of the building that can be a subject to ownership. Joint part of the property is for example: roof construction, staircase, elevator, attic, facade, chimneys, basements etc.

PUBLIC BUILDING MANAGER

Based on the Law on Utilization, Management and Maintenance of Building Common Areas and Equipment the conditions have been met that, along with the existing Certificate issued by the Civil Protection Service of the City of Tuzla, the public building manager can be a legal or personal body - a craftsman registered for the management and maintenance of facilities and who meets the requirements for performing these tasks. The certificate is issued for a period of 3 years.

The law stipulates that each building must have a Building Management and Maintenance Agreement signed with one of the authorized public building managers. In case of the absence of such agreement, local administration, and that is the City of Tuzla, Civil Protection Service, shall appoint a compulsory or temporary public building manager who will manage the building until the conclusion of a regular management agreement.

Rights and obligations of a public building manager

Rights and obligations of a public building manager are stipulated by the Law on Utilization, Management and Maintenance of Building Common Areas and Equipment.

Authorized representative of condominium owners

Each building has its own representative, selected by other condominium owners, who is authorized to represent them. Building representative is a person who takes care of the building (reports on breakdowns, arranges for urgent interventions, small repairs, reports changes in ownership etc.) and is in permanent contact with the public building manager. He is entitled to service charges for his work. **By decision on house rules the amount paid cannot be higher than 10% of the total monthly payments of condominium owners.** When submitting an offer to the public building manager, it is important to address first the authorized building representative.

Rights and obligations of a condominium owners' committee

A representative of a condominium owners cannot bring decisions instead of condominium owners. For his performance, the representative is accountable to the condominium owners. The representative of condominium owners shall sign the building management agreement with the public building manager, in the name and on behalf of condominium owners.

Condominium owner's representative is a link between a building, condominium owners and also a public building manager. Condominium owner's representative is important for regular functioning of a public building manager when it comes to the implementation and execution of all necessary works and obligations in and on the building. For his performance, a public building manager is responsible to condominium owners through authorized representatives. Good relations between representative and a public building manager is a precondition for successful collaboration.

Service charges

Service charges of the building are collected into the financial fund of condominium owners from which is paid legally mandatory and other maintenance of the building and improvements in buildings. Paying service charges is the legal obligation of all condominium owners. In order for condominium owners to have the ability to maintain a building and pay for expenses (emergency intervention, minor repairs, cleaning, staircase lighting, elevators, etc.), all must pay service charges.

Every condominium owner pays monthly service charges for each separate part. Decision on the amount of service charges per square meter is brought by condominium owners and it is in the minimum amount of BAM 0,3/m², which is a legal minimum. The amount of service charges is determined for each apartment separately in accordance to the total surface of the apartment. Billing of service charges is a task of a public building manager who pays the money on separate building bank account and distributes these funds in accordance to the need and in accordance to the Law and decision of condominium owners.

Service charges money is used to pay all obligatory building expenses, regular and outstanding maintenance of common areas and equipment. Condominium owners can decide to pay some other expenses, not related to the maintenance of the common areas and building equipment.

Costs of management and maintenance, building security, fire protection, pest control, disinfection and disinfection, regular monthly elevator service, regular cleaning of the entrance, video surveillance in buildings

Service charges for the public building manager

For performed task a public building manager has a right for compensation paid from service charges. The Law stipulates maximum amount of service charges for a public building manager up to 15% of total service charges of the building.

PUBLIC BUILDING MANAGER'S SUPERVISION

Supervision over the execution of the obligations from the Law on Utilization, Management and Maintenance of Building Common Areas and Equipment is performed by the Civil Protection Service of the City of Tuzla, and the supervision over the implementation of the law is performed by the Ministry of Physical Planning and Environmental Protection.

SERVICE CHARGES LIMITATION PERIOD

The public building manager is obligated to, with a previously submitted written warning, make claims from condominium owners for outstanding obligations arising from the maintenance and management of common areas and building equipment, **taking into account the deadline for the limitation of these claims, and initiating the enforcement procedure according to the final judgments rendered.** Limitation period applicable to these claims is **3 (three) years**, because these claims are considered to be temporary and occasional claims.

If the condominium owner does not pay service charges for maintenance and management of common areas and building facilities for three months, the public building manager of the building has the right and obligation, on behalf of and for the account of condominium owners, to file a charge for service charges against that condominium owner at the relevant court, informing the condominium owners' committee about undertaken actions.

BUILDING MANAGEMENT IN PRACTICE

An integral part of a set of monthly overhead utility bills is a bill for the management and maintenance of a building, at least with condominium owners who regularly pay those bills. Have we ever wondered where do these funds go? Those who regularly pay their bills, they fulfil that obligation because they are aware of the need and legal obligation to do so. But, how much we really care about the final destination of these funds, how they are managed and spent? The answer on these questions partly lies in the fact that our apartments have been assigned to us a long time ago by some public company, or the state institution, or were inherited from our parents. If we exclude the privatization of apartments through certificates, apartments bought with own money relate only to apartments in buildings constructed in some ten years' period. The answer to our questions lies in the fact that many people have not experienced how it feels to buy own apartment and that is the reason why these people are lacking the awareness and interest for the building maintenance.

In 80% of cases members of condominium owners' committee are pensioners who appreciate additional income in the approximate amount of BAM 60,00 – 70,00 monthly from collected service charges. This practice should change and younger people, who would take an altruistic approach to all these obligations, should be appointed as committee members.

The process of the selection of the public building manager is very often non-transparent and conducted merely as a formality. Changes in awareness within this segment are necessary if we think about our personal interest. The same matrix should be used with selection of the public building manager. Public building managers are condominium owners' service, and not building owners, although some public building managers behave like they are.

Why is the selection of condominium owners' committee and public building manager of such a big importance?

Both mentioned bodies are of a crucial importance for the condition in every building. From the quality of their work and their attitude towards finances depend both internal and external condition of the building. Finally, every condominium owner can make a simple test in order to assess both committee members and public building manager. Let's ask ourselves some questions like:

- Is the elevator is functioning properly?
- Does the elevator have the operating licence?
- Has 3 D been done?
- Do we have a fire distinguisher on each floor?
- Does the hydrant network functions properly?

- What is the condition of installations (electric, lightning protection and similar)?
- Is the building shipshape, painted, lit?

Facades of buildings are problem as such. On almost every building a warning about a facade catches an eye. Problem with parts of building falling is solved with warning signs: “IN DANGER OF COLLAPSING AND THE FALL OF PARTS OF THE BUILDING “.

With these signs both committee representatives and public building managers shift their responsibility to “irresponsible and mindless” innocent bystanders if something crashes on their heads, because they are not watching their steps and if the piece of the facade falls on somebody’s head, the building insurance covers expenses for third persons, but not for that building/entrance condominium owners, because it is considered that owners take care of the property and shared assets.

The same refers to snow deposits, heavy rainfall and icicles, because if it happens that icicle falls on a vehicle parked in front of the building entrance, a condominium owner is not entitled to insurance reimbursement due to the fact that condominium owners are obliged to clean the snow in front of their entrances, as well as icicles from the roof. If the damage happens to the third person, the insurance company is obliged to reimburse. Therefore, condominium owners are obliged to worry about their personal property as well as common areas in the same entrance, because that is also the part of their property. Condominium owners have to pay service charges and to take care of safety, purity and hygiene of the construction object itself, because, at the end, that is something that condominium owners owe to themselves.

The problem that public building managers are facing in the city is the result of the omission and superficial engagement synergy of almost all subjects involved. None of us can be amnestied from their part of the responsibility. Everyone can, from legislature to every individual condom owner, identify their responsibility for the current situation in buildings. Unfortunately, even under conditions of unprofessional attitude towards obligations, only the insurance company, cleaning agency, elevator maintenance company and public building manager representative will make their profit for sure.

Another key link is the Civil Protection Service, which has a legal obligation to supervise the fulfilment of obligations under the Law on the Use, Management and Maintenance of Common Areas and Building Equipment. Maybe all other obligations have been fulfilled perfectly, but in the field of public building management, they take the easy way out.

Why there is such attitude towards public building managers and why, in solving problems between public building manager and tenants they act as mediators, one should ask the Civil Protection Service. Are the public building managers protected?

Our buildings are our property, the public building manager is just a service and city authorities have to work in the interest of their citizens because it is their obligation and a duty. And finally, that is the reason why they won a trust of condominium owners.

The point is that, until 31.12.2018, when current public building manager’s certificates expire, and prior to the election of the new public building manager, or extension of cooperation with

existing public building manager, starting with 01.01.2019, the new contract is presented to condominium owner together with conducted analysis of previous work and condition of each particular building. Unfortunately it is for sure that all public building managers will be certified again, both good ones and unsatisfactory ones, but we should not hesitate to change the unsatisfactory public building manager, as well as the unsatisfactory condominium owners' committee.

WE ARE ALL RESPONSIBLE FOR THE IMAGE OF THE CITY!!!

Starting from the definition that building management and maintenance is of public interest and the fact that it turned into the personal interest, was the "merit" of almost all relevant authorities. The simple thing, such as theft proofing, which can be easily proved, is impossible to prove, not because it is unprovable, but because it seems that the system is rejecting this type of proofing. The system has been programmed to turn the public interest into the personal benefit. For illustration purposes, here is one example: if the real revenue of the building, according to attached documents, generated by maintenance charges, amount approximately BAM 40.000 and, on the other hand, public building manager claims that he collected the amount less than BAM 20.000 KM, than it raises the question: "Are there any reasonable grounds to believe that a fraud has been committed"?

Therefore, when choosing the public building manager with which we will start 2019, or the decision to continue our cooperation with the previous one, we need to deeply analyse each public building manager, but also a present condition of our building, we should ask for references and previous experiences of other condominium owners. Just as good, so will the bad decision ultimately reflect on the building itself, and thus to our pocket.

If we do not demonstrate today that we can protect our interest with our choice, and if, through the existing system, we continue to allow arbitrariness, it is not excluded that in this segment one day a catastrophe will happen.

For example, there are authorized condominium owners' boards who receive monthly service charges in the amount of app. BAM 300,00 to 400,00, which is high amount compared to standard. There are representatives who are withholding this position for 15 years, or are representing two entrances, instead stipulated one. By the Decision on House Rules in Building Premises, published in Official Gazette of Tuzla City, number 7 of 28.06.2018 it is stipulated that the amount cannot exceed 10% of the total monthly payments of the condominium owners, and we are witnessing that many public building manager do not respect this, just like representatives, since in the end everything is turning around service charges and around the number of building entrances public building managers have.

Many representatives have not convened an assembly of condominium owners for years because they are afraid to be replaced and therefore they collect signatures going from door to door, and only from those condominium owners who make no problems when signing which ultimately discriminates the rest of condominium owners in such cases. Each representative is obliged to present the provisions of the Management Contract to each condominium owner - to his

neighbour for inspection, because the representative himself, as a condominium owner, may be misdemeanourly punished.

The Civil Protection Service is more likely to behave like someone who is there to settle the two insured parties, because it never happened that any public building manager would be punished for a misdemeanour, nor was he responsible for any committed misconduct.

Authors:

Amela Pejdah, Lawyer

Sanela Džanić, Lawyer

Habiba Suljetović, Lawyer