

Procedure of Real Estate Acquisition by Foreigners in Poland

Ryszard ŻRÓBEK, Sabina ŻRÓBEK, Poland

Key words: foreigners, permits, real estate acquisition, administrative decision

SUMMARY

Real estate in Poland can be acquired by foreigners after a special permit has been obtained; such a permit is issued as an administrative decision. Since 2004 (Poland's accession to the European Union), such permits have been required for the inhabitants of countries outside the European Economic Area. For the EU citizens, so-called "transition periods" are in force (agricultural estates, forests and "second homes"). This study presents the procedure of real estate acquisition by foreigners in Poland.

The intensity of the process has been analysed in detail for the years 1990 – 2005, taking into account the year 2005. Source data have been taken from a report of the Ministry of Internal Affairs and Administration.

Sale of real estate to foreigners does not affect the market in Poland to any significant extent.

Wycena Nieruchomości dla Celów Specjalnych w Polsce

Ryszard ŻRÓBEK, Sabina ŻRÓBEK, Polska

Słowa kluczowe: wycena, wartość rynkowa, ograniczony rynek nieruchomości

STRESZCZENIE

Zasady wyceny nieruchomości w Polsce uregulowane są w przepisach prawnych w randze ustawy i rozporządzeniach wydawanych przez odpowiednich ministrów. Określają one podejścia, metody i techniki wyceny, wskazują warunki i ograniczenia ich stosowania.

Polska Federacja Stowarzyszeń Rzecznawców Majątkowych opracowała standardy zawodowe, które obowiązują wszystkich rzeczoznawców majątkowych. Jednakże w praktyce rzeczoznawcy napotykają na trudności w określeniu wartości rynkowej nieruchomości, między innymi w następujących przypadkach:

- 1) nieruchomość będzie poddawana rozwojowi, ulepszeniu poprzez zainwestowanie w nią środków finansowych,
- 2) nieruchomość jest zabudowana budynkami przeznaczonymi do rozbiórki,
- 3) nieruchomość rolna położona jest na obszarze, gdzie do tej pory nie dokonano sprzedaży takiego rodzaju działek gruntowych,
- 4) grunt przeznaczony jest w miejscowym planie zagospodarowania przestrzennego pod zielenią miejską,
- 5) określenie wartości prawa użytkowania wieczystego gruntów,
- 6) grunty są przeznaczone lub zajęte pod drogi,
- 7) szacowane nieruchomości pozostawiono poza obecnymi granicami państwa polskiego.

Są to przykłady wycen nieruchomości, dla których rynek transakcji jest ograniczony lub nie istnieje, brak jest więc cen sprzedaży nieruchomości podobnych.

1. INTRODUCTION

Acquiring the right of ownership or the right of perpetual usufruct of real estate by foreigners is regulated by the provisions of the Law of Real Estate Acquisition by Foreigners of 24 March 1920, which has been amended many times, i.e. after Poland's accession to the EU in 2004. The uniform text was published in 2004 and further amendments were made in 2005. The law is based on the precept that a permit is required for a foreigner to purchase real estate in Poland. Such a permit is issued in the form of an administrative decision by the Ministry of Internal Affairs, unless an objection is raised by the Ministry of Defence or the Ministry of Rural Development (in the case of agricultural real estate).

According to the real estate law, there are three types of real estate in Poland:

- 1) land real estate (with or without buildings),
- 2) building real estate (associated with the right of perpetual usufruct of land),
- 3) apartment real estate (together with a share in the building and in the land it is on).

All these types of real estate, together with restricted real property rights (the ownership right to an apartment in an apartment cooperative) can be sold and purchased (ŻRÓBEK, 2006).

Restrictions are applied to the right of ownership and the right of perpetual usufruct only if their acquisition is a result of a legal act.

This does not concern the acquisition of restricted real estate rights or other rights to real estate.

The regulation does not cover the transformation of a commercial company governed by law or the acquisition of a real estate through legal inheritance.

This paper presents the current procedure of real estate acquisition by foreigners in Poland.

Basic data were used to analyse the permits for foreigners to acquire real estate, issued from 1990 to 2005.

2. LEGAL ASPECTS OF REAL ESTATE ACQUISITION BY FOREIGNERS IN POLAND

2.1 Legal foundations

Restrictions on the freedom for foreigners to acquire real estate in Poland are exceptional, which rules out the intensive interpretation of the provisions of the law (G. BIENIEK, S. RUDNICKI, 2005).

The legal regulations cover all the cases of acquisition of the rights of ownership and the right of perpetual usufruct. This concerns both the primary acquisition and the derivative acquisition (inheritance, acquisitive prescription).

These issues are dealt with by the following regulations (as of 30 December 2006):

- 1) The law of real estate acquisition by foreigners (i.e. Journal of Laws No. 167, item 1759) and its amendments, contained in:
J. of Laws of 2005, No. 94, item 788 (Art. 3) and J. of Laws of 2005, No. 183, item 1538 (Art. 185).
- 2) Regulation of the Ministry of Internal Affairs and Administration of 26 April 2004 on detailed information and types of documents to be submitted by foreigners applying for a permit to acquire a real estate
- 3) Regulation of the Council of Ministers of 23 November 2004 on the procedure and principles of keeping record of real estates, shares and other securities acquired by foreigners.

The following conclusions and restrictions result from the regulations:

- 1) a real estate can be acquired after obtaining a permit,
- 2) the permit is issued as an administrative decision,

- 3) the permit is issued by the Ministry of Internal Affairs, unless an objection is raised by:
 - a) The Ministry of Defence,
 - b) The Ministry of Rural Development (agricultural and forest real estates),
- 4) the word “foreigner” denotes, in particular:
 - a) an individual who is not a Polish citizen,
 - b) a legal entity with the registered office abroad,
 - c) partnerships of individuals or legal entities, themselves without a status of a legal entity, with the registered office abroad, when such a partnership has been established according to the law of a foreign country,
 - d) a legal entity and a trade company without the status of a legal person, with the registered office in the territory of the Republic of Poland, controlled directly or indirectly by entities or individuals referred to under a, b, and c.
- 5) real estate acquisition refers to:
 - a) the right of ownership,
 - b) the right of perpetual usufruct (land).

A permit to acquire a real estate is issued under the following conditions:

- 1) The real estate acquisition does not pose any threat to the defences, security or public order in the Republic of Poland,
- 2) Circumstances exist which confirm the links of the foreigner with the Republic of Poland by:
 - a) Polish citizenship or origin,
 - b) marriage to a Polish citizen,
 - c) a restricted residence permit,
 - d) membership in a governing body of a foreign company with the seat in Poland,
 - e) conducting business activities in Poland.

The following acts do not require a permit:

- acquisition of an independent residential apartment or garage – if it is to satisfy the foreigner’s own needs,
- real estate acquisition by a foreigner who has been residing in Poland for more than 5 years,
- for spouses of Polish citizens who have been residing in Poland for more than 2 years,
- in the case of statutory succession,
- acquisition of a real estate with building, in the total area of 0.4 in a town, for statutory purposes,
- acquisition of an agricultural or forest real estate, if such a real estate is acquired by a EU citizen more than 12 years after Poland's accession to the EU,
- purchase of a second home – 5 years after Poland's accession to the EU,
- acquisition of agricultural and forest real estates after 7 years from signing a lease agreement with the certified date (for the following provinces: dolnośląskie, kujawsko-pomorskie, lubuskie, opolskie, pomorskie, warmińsko-mazurskie, wielkopolskie and zachodniopomorskie),
- acquisition of agricultural and forest real estates after 3 years from signing a lease agreement with the certified date, if a foreigner has personally conducted agricultural activities on the land or legally resided in Poland,

- the purchase of a second home – the purchaser with a legal and uninterrupted residence in Poland for at least 4 years.

2.2. The procedure of real estate acquisition

The following procedure is in force in real estate acquisition by foreigners:

- 1) filing an application by the foreigner,
- 2) issuance (or a refusal to issue) a permit by the Ministry of Internal Affairs and administration (MSWiA),
- 3) objection (if any), in the form of a decision, to the permit issued by the Ministry of Internal Affairs and Administration, raised by the ministers of defence and/or Ministry of Agriculture,
- 4) decision of the Ministry of Internal Affairs and Administration, based on the code of administrative procedures,
- 5) possible appeal to the Supreme Administrative Court,
- 6) the final decision by the Supreme Administrative Court.

Provisions of the code of administrative procedure apply in the proceedings concerning real estate acquisition by a foreigner. Some administrative barriers have been removed. The influence of supreme administrative bodies has been restricted. The Ministry of Defence and Ministry of Agriculture do not issue permits to acquire a real estate but only have a statutory right to raise an objection. The objection is issued in the form of a decision within 14 days of delivering the permit issued by the Ministry of Internal Affairs and Administration.

A refusal to issue a permit does not entail the need to inform the Ministry of Defence or the Ministry of Agriculture. The Ministry of Internal Affairs and Administration does not need to give reasons for his refusal if they are issues of national security.

A real estate acquisition by a foreigner performed contrary to law is null and void. The nullification of a real estate acquisition is decreed by a court of law.

3. QUANTITY AND QUALITY ISSUES RELATED TO REAL ESTATE ACQUISITION BY FOREIGNERS BASED ON A PERMIT ISSUED BY THE MINISTRY OF INTERNAL AFFAIRS AND ADMINISTRATION

3.1. Permits issued in 2005.

In 2005 the ministry issued 663 permits to acquire real estates, shares and other securities by foreigners, including 592 permits to acquire real estates in the total area of 1,786.19 ha; 373 permits were for the acquisition of agricultural and forest real estates (1,759.14 ha). Thirty-eight permits were issued for acquisition of residential and utility premises in the border zone, the premises area totalling 6,258.75 m².

At the same time, the ministry issued 168 refusals. The reasons behind the refusals included a lack of sufficiently strong links with Poland, insufficient evidence submitted with the applications or objections raised by the Ministry of Agriculture.

According to the data in the real estate records, foreigners acquired real estates of the following area:

- a) 2933 land real estates – Σ 3458.91 ha
- b) 1676 apartments – Σ 172,118.80 m².

However, in 2005 the Ministry of Internal Affairs and Administration received 33 notarised deeds which had been drawn up in breach of the provisions of the law. Sixteen suits were filed for nullifying real estate acquisition.

In 2005, permits were issued, in particular, to the citizens of the following countries:

Table 1
Permits and the real estate area

Country	Number of permits	Area	
		(ha)	(%)
Germany	216	390	22
The Netherlands	58	312	17
Ukraine	30	6	0
UK	28	59	3
Austria	28	35	2
France	25	326	18
Belgium	23	84	5
Other countries	184	574	33
TOTAL	592	1786	100

Source: Real Estate Register, 2005

The data in Table 1 show that the permits issued to citizens of Germany, The Netherlands and France accounted for 57% of the total real estates acquired by foreigners.

In 2005 an increase was recorded in the number of transactions without permits. This was a consequence of changes in the regulations, that took effect as from 1 May 2004 (Poland's accession to the EU). The transactions carried out by the entities which did not need to obtain a permit accounted for 81% of the total number of real estate acquisitions.

3.2. Real estate acquisitions by foreigners in 1990 - 2005

In the years 1990 – 2005, foreigners obtained 21,439 permits for real estate acquisition. The area of the acquired real estates totalled 43,360 ha, which accounts for 0.14% of the area of the Republic of Poland (Table 2).

The relationship between the number of permits issued and the area of the real estates acquired based on the permits is shown in Fig. 1.

An analysis of the data shown in Fig. 1 reveals that the number of permits (as was the area of the real estates acquired) was the highest in 1999.

The number of permits and the area of real estate sold to foreigners grew steadily in the years 1990 – 1999. Upon Poland’s accession to the EU (2004), the number of permits issued was similar to that from 1991.

In the period between 1990 and 2005, 1340 permits on average were issued each year (area – 2710 ha/year). Each permit was for 2.02 ha on average.

In the years 1990 – 2005, the Ministry of Internal affairs and Administration issued 2770 refusals (about 10% of the total number of permits).

A large majority of permits were issued for real estate acquisition by citizens of countries from the European Economic Area.

Table 2

Permits to acquire real estates issued in 1990-2005

(this specification does not include the permits to acquire shares in companies which hold the right of ownership or the right of perpetual usufruct of a real estate)

Years	Number of permits	Area of real estates covered by the permits (ha)	Years	Number of permits	Area of real estates covered by the permits (ha)
2005	592	1.786	1997	2001	2.942
2004	1065	2.691	1996	1454	2.439
2003	1580	4.718	1995	1342	1.952
2002	1595	4.884	1994	1291	1.518
2001	1536	3.629	1993	967	2.008
2000	1478	3.659	1992	876	705
1999	2304	5.142	1991	604	534
1998	2189	4.355	1990	565	398
Total	21439	43.360			

Source: Report of the Ministry of Internal Affairs and Administration, 2005

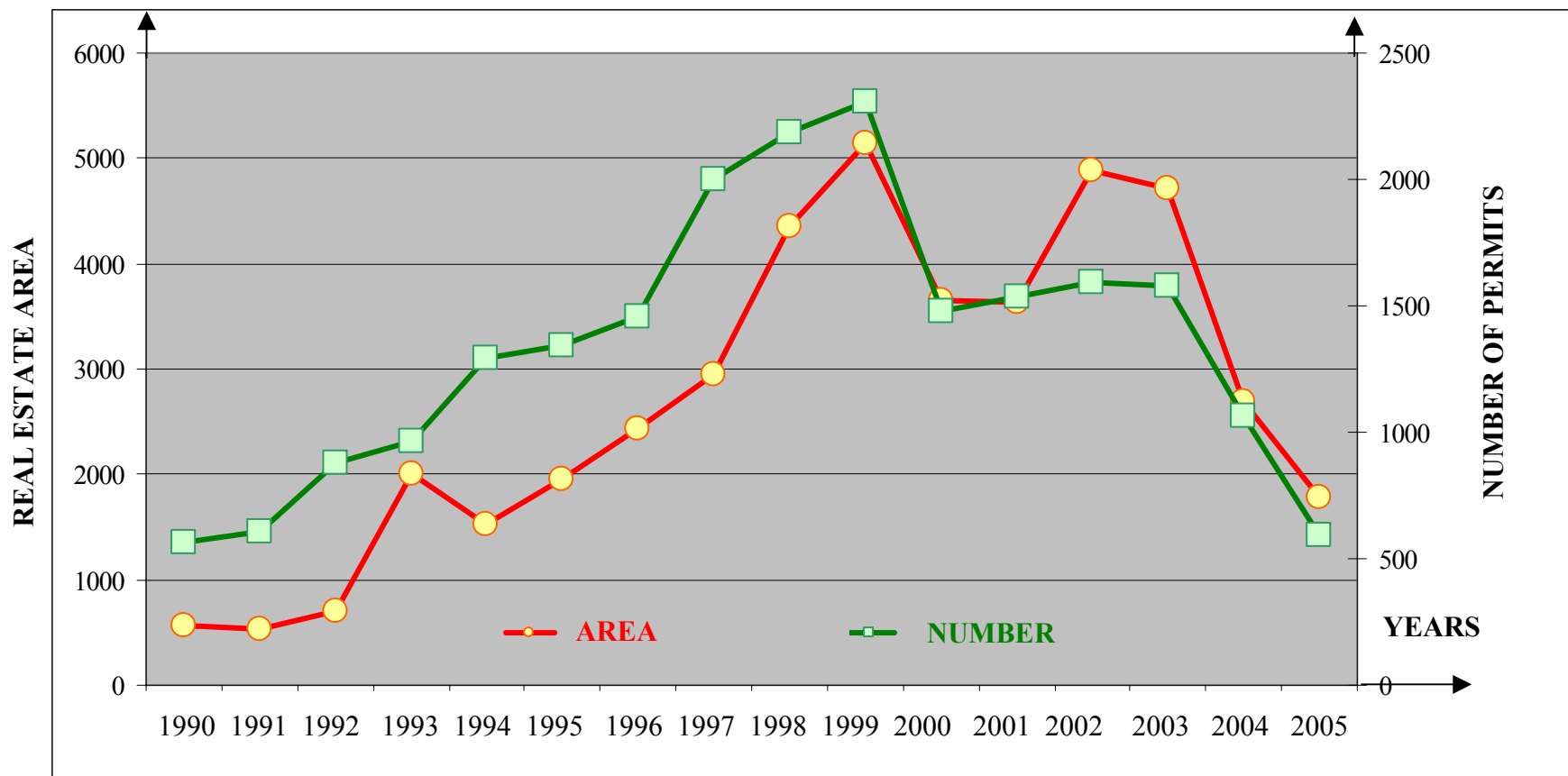


Fig. 1. The number of permits vs. the area of real estates covered by the permits in the years 1990 – 2005

Conclusions

Real estate acquisition by foreigners in Poland is subject to restrictions. They consist of having to obtain a permit from the Ministry of Internal Affairs and Administration.

The legality of transactions of acquisition of the right of ownership or the right of perpetual usufruct of real estates is scrutinised.

A registry is kept of the real estates acquired by foreigners. According to the data contained in the register, real estate acquisition by foreigners does not affect the real estate market in Poland.

The law of real estate acquisition by foreigners, amended in 2004 and 2005, abolished most of the restrictions in real estate acquisition by entities from the European Economic Area. However, a transition period has been introduced for the acquisition of agricultural and forest real estates, as well as that of second homes.

Incidentally, there are no formal restrictions in the sale of real estate by foreigners to Polish citizens.

It should also be emphasised that real estate acquisition by foreigners in Poland is effectively controlled in terms of its legal and administrative aspects.

REFERENCES

Bieniek G. - Rudnicki, S., 2005. Real Estates. LexisNexis. Warszawa. (in Polish)
Żróbek, S. – Żróbek R. – Kuryj, J. 2006. Real Estate Management. Gall. Katowice (in Polish)

BIOGRAPHICAL NOTES

Ryszard Żróbek

Academic experience: Professor at the University of Warmia and Mazury in Olsztyn. Faculty of Surveying and Land Management

Current position: Director of Post-Graduation Courses in Land Valuation and Real Estate Management, Head of Land Valuation Partnership in Olsztyn

Practical experience: Land valuation, real estate management, land registry, international expert in land tenure data base and land valuation system

International experience: World Bank expert (1990 – 1992), F.A.O. (2003 – 2004)

Activities in home and international relations:

Member, Editorial Board International Journal of Strategic Property Management, 1989 –

Member, Polish Society of Surveying, 1975 –

Member, Polish Real Estate Society, 1992 –

Member, Regional Study Association, 1999 –

Member, Polish Society of Real Estate Appraisers, 1992 –

Member, Polish Society of Real Estate Managers, 1999 –

Chief Editor of the Valuation quarterly, 1992 – 2000

Editor of the Land Surveying Review, 2002 –

Member of the State Council for Real Estate, 2004 –

Sabina Żróbek

Academic experience: Land Surveyor and Land Management M.Sc. Ph.d., University of Warmia and Mazury in Olsztyn, Professor in the field of technical sciences

Current position: Director of Department of Land Management and Regional Development, University of Warmia and Mazury in Olsztyn

Practical experience: licensed valuers, coordinator of many projects connected with property development, creation of land value maps, land information systems

Activities in home and international relations:

President of Polish Real Estate Scientific Society

Scientific Editor of the Journal of the Polish Real Estate Scientific Society

Chief of Editorial Board – Acta Scientiarum Polonorum – Administratio Locorum

FIG, Commission 9, Polish delegate

Member, Polish Society of Real Estate Appraisers,

Member, Polish Surveying Society

CONTACTS

Sabina Żróbek

University of Warmia and Mazury in Olsztyn

10-724 Olsztyn, Ul. Prawocheńskiego 15

POLAND

Tel. +48 89 5233886

Fax. +48 89 5233832

E-mail: zrobek@uwm.edu.pl

Ryszard Żróbek

University of Warmia and Mazury in Olsztyn

10-724 Olsztyn, Ul. Prawocheńskiego 15

POLAND

Tel. +48 89 5234962

Fax. +48 89 5233832

E-mail: rzrobek@uwm.edu.pl