

## Real Estate Manager Models – Polish Legal Solutions

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ABSTRACT	
<p>Purpose – The purpose of this article is to present the development of the profession of real estate manager in the Polish legal system and the path to the current model.</p> <p>Design/methodology/approach – The research focuses on the analysis of Polish legal solutions from before 2013 and after that date. Legislative solutions of other countries were also mentioned for comparison.</p> <p>Findings – Descriptive studies are based on the texts of legal acts and the analysis of the literature. The conducted research includes an assessment of the effects of the reform of legal regulation carried out in 2013, pursuant to which the profession of a manager was deregulated.</p> <p>On this basis, preliminary normative conclusions were formulated as to the achieved results of the change in the law. The article is a review, its aim is to analyze the legal conditions of the activity consisting in real estate management in Poland.</p> <p>Research limitations and implications – the analysis is limited to the regulations of Polish law, European solutions are indicated, for example, only as a background for considerations</p>	
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## INTRODUCTION

The purpose of this article is to present the development of the profession of real estate manager in the Polish legal system and the path to the current model.

The real estate market is an important segment of the economy of any country. Real estate is the basis for the operation of many state institutions and is an essential component of the property of local government units. Real estate, owing to its high value, is an important asset for both entrepreneurs and private persons. Real estate is also a source of income for many people and the subject of financial security. In the modern world, the role of real estate is very broad, it provides a platform for family life, professional activities, travel and leisure, and healthcare. It is also the basis of business activity and the subject of investment.

The division into residential and commercial real estate plays a special role in contemporary economic realities. There are no separate legal regulations in Polish law relating to the management of non-residential real estate. However, the literature on the subject clearly distinguishes the management of real estate of enterprises (Rymarzak, 2009) or commercial real estate (Foryś, 2008) from the management of residential real estate, owing to its specificity related to the ownership structure, the purpose of the real estate, and the way of use. The division into residential and non-residential real estate affects the nature of management activities and the range of competences of real estate managers.

In Poland, the real estate market began to emerge in the interwar period, i.e. in the years 1918-1939. At that time, two strong groups of investors appeared on the market, in the form of insurance institutions and private persons, who purchased real estate because investing in it was considered a profitable capital investment (Kucharska-Stasiak, 1994). The outbreak of World War II interrupted the development of the real estate market in Poland, and after 1945 it did not return to its original tracks. Only after 1989, was the construction of a modern real estate market resumed.

One of the important elements of the real estate market is the presence of specialized entities within it, including real estate agents, credit advisers, property appraisers, and real estate managers. The professionalism of these entities determines the effectiveness of their activities and the efficiency of the functioning of this market (Kalus, 2009).

Real estate management is an important activity that ensures the preservation of real estate in good condition, the optimal use of its potential, and rational investment in real estate. The basic duties of the real estate

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manager include real estate management, i.e. keeping its records, keeping it in the technical condition that is required by regulations and instructions (inspections, repairs, maintenance), the protection of real estate, compliance with local and state administration regulations, organizing and supervising the operation of buildings, concluding contracts with suppliers of municipal utilities, sewage disposal, and waste disposal, supervising payments made by tenants and lessees, as well as managing personnel employed on the property (Gawron, 2019). Management processes must be tailored to the type, nature, and use of real estate, and to the expectations of its owner. It is a difficult and responsible profession, requiring commitment and appropriate competences. In Poland, approximately 40,000 people have obtained a licence to practice as real estate manager (Gawron, 2019). Private persons, entrepreneurs, and housing communities are the clients of real estate managers. The role of the real estate manager is, therefore, very important, and his actions have a direct impact on the condition of the estate and the safety of its residents and users. For this reason, the way in which the requirements related to the obtaining of the entitlements to, and the rules of performing, the profession of real estate manager as laid down in the state legislation, are of great importance.

The initial part of the article presents the history of this profession and the circumstances of the emergence of a modern real estate market in Poland. Then the model of the regulated profession adopted in 1998 with its characteristic elements is presented. A significant change took place in 2013, when the profession was deregulated by law. Finally, the current model is characterized, i. e. a model of real estate management as part of business activities, in which there is no longer a requirement to have a licence to perform the profession of manager.

### **LITERATURE REVIEW**

There is no comprehensive study on the profession of property manager in Polish literature. This subject was thoroughly described in the monograph on regulated professions (Jaworski, 2010) and real estate market participants (Kalus, 2009). These studies contain detailed studies relating to the position of the property manager, but unfortunately before the 2013 reform. After that date, only scientific articles on selected problems related to real estate management were published (Cymmerman, 2013; Kalus, 2013; Nowak, 2014; Sikorska-Lewandowska, 2020).

There are more studies in the literature related to property management (Lewandowski, 2005; Foryś, 2008; Rymarzak, 2009; Najbar, 2013; Gawron, 2019), but they only concern property managers to a limited

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extent. The vast majority of them were also created before the reform in the profession. Recent studies do not give much attention to the profession of property manager.

### **ESTABLISHMENT OF THE REAL ESTATE MANAGER PROFESSION**

The profession of real estate manager in Poland has a very long tradition. In the 16<sup>th</sup> and 17<sup>th</sup> centuries, the country's economy was based on the “folwark pańszczyźniany”, i. e. a large farm based on the work of serf peasants (Bardach, 1994). Those estates were the property of the nobility, and the largest ones belonged to the magnates - the richest class of the nobility. Significant land estates belonged to the ruler of the country. Those estates developed the position of a manager, known as an ekonom, which meant the manager of the estate. His role was to administer the property, supervise all employees, organize their work, and supervise the real estate, livestock, and agricultural produce. The manager was, therefore, one of the most important officials in the estate, he was a trusted person who had access to important information and to funds. That position was present in some noble estates and in all magnate estates. Also in the literature from the nineteenth century there were references to property managers for whom special manuals were issued (Sobociński, 1964). It should be recognized that the profession of real estate manager in Poland was formed in magnate latifundia, however, its development in the modern sense took place only when towns and cities were founded.

The development of industry led to the development of cities. It happened in Poland in the 19th century. There was an intensive influx of labour from the villages, and the cities lacked flats, so numerous tenement houses were built. Municipal properties brought income from rent, and the profession of a manager-administrator was then developed, whose role was to service tenement houses, and in particular to collect rent. So the manager looked after someone else's real estate. In the interwar period, the flat rental market in Poland was so developed that a publishing initiative was launched in the form of the "Legal guide for the owner of municipal real estate", which published information on property maintenance, necessary technical works, or issues related to rental agreements (Kałkowski & Stanisławska, 2008).

The profession of real estate manager was formed in response to the need to ensure the management of private property - royal, magnate, noble, or later - tenement houses in cities. The manager, for a fee, on behalf of the owner, dealt with all matters relating to the property entrusted to him with management, in accordance with its nature and use.

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This development trend was halted after 1945. The system of real socialism adopted in Poland recognized the primacy of state property and social property, rejecting private property (Bednarek, 1994). The introduced agrarian reform led to the liquidation of land estates, as a result of which the profession of property manager died out naturally. Numerous estates were taken over by the state, including municipal properties. Ownership relations in cities changed significantly. Public housing was introduced, in which state officials decided to accommodate tenants without the consent of tenement owners. Rental rates (regulated rent) were specified top-down, which were very low and did not bring income to the owners of the property. Real estate trade was not free, and the state became the largest owner of real estate. Enterprises and workplaces were state-owned, while the private sector was reduced to a minimum. Housing cooperatives were established to build multi-family housing estates. During that period, a certain group of real estate administrators emerged, as part of state-owned enterprises, who dealt with the administration of company-owned flats. Similarly, staff employed in housing cooperatives also dealt with such activities. However, it was not a classic provision of management activities commissioned by the real estate owner, because in this case housing cooperatives and enterprises were the owners of the real estate. Thus, management concerned owned property, and the activities were performed by employees of these institutions.

This state of affairs changed after 1989, when Poland underwent a political and economic transformation. As a result of a number of reforms, an economy based on a free market was introduced and state-owned enterprises were privatized (Kaliński, 2009). The legal regulations regarding the purchase of real estate were changed by removing all restrictions. Many private owners regained their properties, especially town houses. A development market was created and the legal regulation of housing communities was introduced, which resulted in their rapid development. As a result, there was a market demand for servicing these properties and the profession of property manager became needed again. This applied not only to residential real estate, but also commercial real estate, i.e. used for business purposes. In Poland, it was only in the 1990s that the construction was started of large commercial, office, and warehouse facilities on land owned by private entrepreneurs, which resulted in the formation of the facility management sector (Berrett, 2009).

### **A MODEL OF A REGULATED PROFESSION**

On August 21, 1997, the real estate management act was passed (Journal of Laws of 1997, No. 118, item 741), which established three real estate

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professions: real estate appraiser, real estate broker, and real estate manager. It was recognized that the provision of professional services for the real estate market is very important to guarantee the stability of this emerging sector of the economy.

The profession of property manager was thus included in the group of regulated professions, i. e. those that can be performed after meeting the requirements regulated by law (Jaworski, 2010). The legal regulations stipulate that it is necessary to obtain a professional licence and be entered in the central register of real estate managers. In order to obtain the manager's licence, it was necessary to have at least secondary education, participate in specialist training, undergo apprenticeship, and pass an exam. Having specialist education confirmed by a diploma of higher education or postgraduate studies gave exemption from participation in the training. In 2010, as a result of amendments to the Real Estate Management Act, the requirement for an examination was abandoned owing to the introduction of the obligation to have higher degree studies and to complete postgraduate studies. Thus, people with secondary education could no longer obtain a licence to practise this profession and so criteria for entering the profession became more stringent (Kalus, 2009). Entry in the central register of real estate managers kept by the President of the Housing and Urban Development Office confirmed that the manager was authorised to practise this profession and was a necessary condition to undertake work in this profession. The professional licence of real estate manager could also be obtained by a person who did not have Polish citizenship, after meeting all the conditions set out in the Act, and after demonstrating a fluent command of the Polish language. A person who was not entered in this list, and therefore did not have a licence, could not practise this profession.

The real estate manager was obliged to improve regularly his qualifications by participating in training. It was assumed that obtaining the licence to practise real estate professional was not enough, but it was necessary to train the representatives of these professions continuously. The manager was obliged to comply with the law and professional standards, and to act with particular care appropriate to the professional nature of these activities, and in accordance with the principles of professional ethics. He was also obliged to be guided by the principle of protection of the interest of persons for whom he performs these activities (Jaworski, 2010). The regulations stipulated that the manager could not derive any benefits from the management other than remuneration for the services rendered. An important element of the relationship between the real estate manager and his client is the trust placed in the real estate manager. Entrusting the real

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estate to management usually involves granting powers of attorney to act on behalf of the owner and granting access to the bank account kept for that property. The manager, therefore, has someone else's property - real estate, and someone else's financial resources at his disposal, which must be combined with the utmost diligence, prudence, and loyalty.

A professional liability system was created, under which the Professional Liability Commission was established, which operated at the Ministry of Transport, Construction, and Maritime Economy. It settled complaints against property managers from their clients as well as from others. The Commission conducted the proceedings, explained the status of the case, found whether there had been a violation, and if so, requested the minister to impose an appropriate penalty (Kalus, 2009). The following disciplinary penalties could be imposed against the administrator: admonition; reprimand; suspension of the professional licence for a period from 3 months to 1 year; deprivation of a professional licence with the possibility of re-applying for it, and deprivation of a professional licence with the possibility of applying for its re-granting after 3 years from the date of deprivation. According to the data provided by the Professional Liability Commission, in the years 1998-2007 the Commission dealt with 207 cases of complaints against property managers (Commission, 2007).

The real estate management contract was concluded with the property owner and required a written form. The parties to the real estate management agreements could be private owners, co-owners of real estate, as well as housing communities. The regulations required managers to have compulsory third party liability insurance, which had to cover also persons employed by the manager if they assisted him in his management activities. The purpose of the third party liability insurance of the real estate manager was to cover the two parties of the obligation relationship related to the real estate management service - the real estate manager and the aggrieved party (Lewandowski, 2005). The lack of compulsory third party liability insurance was a disciplinary tort specified in the provisions of the Act, subject to which was only a person with a professional licence.

The name "real estate manager" was a professional title that was protected by law. Unauthorized persons could not use this term, and the consequences of such actions could even include criminal liability (Jaworski, 2010).

The model of the regulated profession was based on several pillars, which together guaranteed the proper level of education of the manager and proper performance of his services, which was a guarantee of security for his clients. These pillars included specific requirements related to obtaining

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professional qualifications, and then requirements related to the performance of the profession. The conditions for gaining access to the profession included: the requirement to have appropriate education, the requirement to complete an apprenticeship and pass an exam, and the obligation to have a licence and be entered in the list of managers. The conditions for practising the profession were: the obligation to have third party liability insurance, the obligation to conclude management contracts in writing, the obligation to improve constantly professional skills, and the obligation to act in accordance with the law, professional ethics standards, and taking into account the client's interest. An important element of this system was the structure of professional responsibility, which underlay the high quality of services provided by managers. The assumption that the professional sector was a security for the real estate market and a guarantee for investors was the motivation for introducing this model (Jaworski, 2010).

The legal solutions of many countries require a real estate management licence; this applies to the United States of America, Belgium, Spain, France, and Austria (Najbar, 2013). In most European Union countries, real estate activities belong to the regulated professions (Szypulewska-Porczyńska, 2017). This means that in these countries it was recognized that, in order to ensure a high standard of real estate market services, it was necessary to define barriers to entering the profession of a manager and standards of its performance. The regulations in these countries establish requirements related to the completion of training in order to obtain qualifications for this profession. Some, e. g. Cyprus, require the passing of an exam, and in most countries the real estate manager is required to have third party liability insurance (Regulated professions database).

### **BUSINESS MODEL**

Pursuant to the Act of 13 June 2013 amending the acts regulating the performance of certain professions (Journal of Laws of 2013, item 829), it was decided to deregulate the profession of real estate manager, as well as the profession of real estate broker. The rationale for this decision was the assumption at the top, according to which, at that time, too many professions in Poland had the status of regulated professions and this needed to be changed. The slogans of increasing accessibility for candidates for these professions and the intention of lowering prices for the services provided were mentioned (Wenclik, 2015). As a result of the reform, the profession was completely deregulated, which means that real estate manager ceased to be a profession defined by law. This model of regulation is in force in some other

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European Union countries, i. e. in Germany and the Netherlands (Najbar, 2013).

Currently, real estate management is a business that can be run by any entrepreneur. This means that one does not need to have any education or professional experience to perform it. Any entrepreneur can therefore undertake such activity, and this applies to both natural persons and legal persons. The regulations set out only two conditions for the exercise of this activity. The first is the obligation to conclude a real estate management contract in written or electronic form under pain of nullity, and the second is the obligation to have third party liability insurance, which covers the activities of the entrepreneur and persons with the help of which he performs management activities under his supervision. A copy of the third party liability insurance document, valid as at the date of concluding the real estate management contract, constitutes an appendix to the management contract. In the event of changes to the data contained in the insurance document, and in the event of concluding a new insurance contract, the real estate manager is obliged to inform the party to the contract for real estate management about it immediately and provide a copy of the insurance document. If the real estate manager does not fulfil this obligation, then his contractor, after requesting the manager to submit a copy of the insurance document, has the right to terminate the real estate management contract with immediate effect as a direct result of the regulation of Article 186 paragraph 3b of the Real Estate Management Act.

As a result of this change in legal regulations, real estate managers are now both natural persons who obtained licences before 2013, but also natural persons who do not have such licences, as well as legal persons. Real estate managers operate as sole proprietorships, partnerships or companies. Housing cooperatives also form a large sector of managers, which manage not only their own, but also the entrusted property, which mainly concerns housing cooperatives. Housing communities are currently the largest recipients of real estate managers who work on behalf of or as court administrators (Sikorska-Lewandowska, 2017). Real estate management contracts are often concluded also by co-owners of real estate in which no premises have been separated. The scope of the responsibilities of a real estate manager is each time specified in the contract with the owner of the estate. The Act stipulates that real estate management consists in making decisions and performing activities aimed at ensuring rational real estate management, in particular: proper economic and financial management of real estate, safe use and proper operation of real estate, proper energy management within the meaning of the energy law, current real estate administration, maintaining the real estate in a non-

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deteriorated condition in accordance with its intended use, and reasonable investment in the real estate. The scope of the manager's responsibilities is therefore very wide, and in the case of specific facilities, such as historic tenement houses, it is further significantly extended. The manager must demonstrate knowledge and competences in several areas, including: law, management sciences, accounting, finance and insurance, economics, technical sciences (architecture, construction) and spatial planning, and sometimes also in the field of monument protection (Olechno-Kulas, 2015). Apart from the substantive knowledge, professional experience and interpersonal competences are extremely important in performing real estate management activities (Kamiński, 2014).

### **CONCLUSION**

The profession of real estate manager in Poland has a very long tradition. It was created in response to practical needs and has been shaped over many years. Currently, it was revived in the 1990s, gaining its statutory regulation for the first time under the legal regulations adopted in 1998. It was included in the group of regulated professions owing to the role of real estate in the national economy and in the property of private persons, as well as the important role played by managers. It was also supported by the high value of real estate that is traded or entrusted with management (Kalus, 2009). The professional group of real estate managers was gradually increasing, as the demand for these services was constantly growing, especially with the increase in the number of housing communities, which became the largest recipients of these services.

The 2013 reform, deregulating the profession of manager, was received with criticism by both the community of managers and representatives of jurisprudence. It was found that it leads to the lowering of prestige of the profession of real estate manager, the reducing of the level of services provided, and has a negative impact on the security of transactions concluded with property managers by contractors - real estate owners (Jaworski, 2012). It was assessed that the changes were introduced in isolation from the realities and real needs, because, regardless of the abolition of the licence from the conduct of legal transactions, a number of important and necessary regulations related to the clarification of the rules for performing these professions were removed (Nowak, 2014). The argument against the removal of the professional liability system of real estate professions was the complaints which were continuously being filed with the Professional Liability

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Committee and were clear proof that it was a body needed by society and fulfilling its role well (Cymmerman, 2013).

The real estate management model currently in force, in which the manager is an entrepreneur running a business in this sector, is based on only two protective instruments for counterparties - the first in the form of an obligation to conclude a written contract and the second in the manager's third party liability insurance. Starting a business is easy and does not require meeting any requirements. It was different when the property manager was a regulated professional. At that time, it was necessary first to obtain qualifications to practise it, and then to practise the profession, taking into account all the requirements resulting from the law. As a result, the level of contractor protection was high, which also had a positive effect on the prestige of the profession. By extending the access to this activity by abolishing, in principle, all the requirements, the risk of choosing a wrong property manager rests entirely with the contractor - the real estate owner (Kalus, 2013). The literature indicates that the current solutions result in the fact that the activities of real estate management, just like mediation activities, can be performed by any person, even someone extremely incompetent. This, in turn, reduces the security of real estate transactions and lowers the quality of the services provided.

According to the current regulation, it is the free market that is to shape relations on the real estate market. It turns out, however, that not every real estate owner and not every housing community board has sufficient knowledge to assess properly the real estate manager's actions. Currently, there is no obligation for the real estate manager to have specialized education or to raise professional qualifications. Putting trust in an entity that does not have expertise or experience in this industry may have negative effects on the contractor, not only in the financial dimension. In such a case, owing to the lack of a disciplinary liability system, the only way of pursuing claims is court proceedings. Meanwhile, neglect of real estate can have catastrophic consequences, both for the substrate of the buildings themselves and for the safety of their users.

Comparing the property management models that have been functioning in Poland since 1998 and after the 2013 reform, it should be stated that there have been fundamental changes. The abandoning of the formula of a regulated profession did not mean only the lifting of barriers to the pursuit of this activity, but also caused significant effects on other areas, which were structural elements of the regulation of this profession (Nowak, 2014). As a result, a coherent system was liquidated, the main purpose of which was to protect the clients of real estate managers. It seems that the nature of real

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estate management activities, the value and role of real estate in private and public life, however, speak in favour of the restoration of some state intervention and a return to entry barriers in the form of the requirement of education and work experience. Perhaps it is not necessary to return to the strict regulation model that was in force before 2013 but leaving real estate management activities only to the will of the parties and allowing anyone to practice this profession, regardless of education, leads to situations which negatively affect the real estate and its owners. Previous legal solutions, in which the property manager was a regulated profession, simply better protected real estate managers' contractors, and also guaranteed high quality of services, which had a positive impact on the real estate market and the security of transactions concluded there.

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