

PLANNING AMNESTY BULLETIN

LEGISLATION FOR THE MODERNISATION OF PROCEDURES FOR THE LICENSING OF DEVELOPMENT, THE LEGALISING OF SPECIFIED IRREGULARITIES IN EXISTING BUILDINGS & THE ISSUANCE OF UPDATED TITLE DEEDS FOR DEVELOPMENTS

GENERAL INFORMATION

Following a two-year period of comprehensive work and intensive, coordinated effort, with the involvement and contribution of numerous authorities, organisations and institutions involved in the construction industry, the House of Representatives has approved amendments of the Town and Country Planning, the Streets and Buildings Regulation, and the Immovable Property (Tenure, Registration and Valuation) Legislations, which were submitted by the Ministry of the Interior. The legislation, which aims at the simplification and modernisation of procedures and legal provisions that eventually lead to the securing of updated title deeds by respective property owners, came into force on April 8, 2011. All deadlines defined in the amended legislation count from that date on.

The need for the introduction of the amended Laws arose, as it became evident that a large number of buildings or building complexes, as well as divided plots, which have been built or constructed on the basis of a planning permit and/ or a building/ division permit, could not be registered by the Land and Surveys Department, so that appropriate certificates of registration could be issued, due to various reasons, related – in some cases – to the need to legalise minor irregularities.

By implementing the amended Legislations, the intention is to enable co-owners and/ or purchasers of property in the case of joint ownership, or even the sole owner of property, to legalise minor building irregularities, in order to secure the required certificate of approval and updated title (certificate of registration) of the property, for the development or for each of the units in comprehensive developments.

For the first time, the legislation is strengthened with temporary provisions, enabling the legalisation of irregularities of specific type, nature, scale and significance, in existing buildings, under certain conditions. The main condition is the existence of a relevant planning permit and/ or building permit for the development. Although this Bulletin does not replace the respective legislation text, interested persons should study its contents carefully, in order to benefit from these provisions. They must also co-operate with a professional – member of the Cyprus Scientific and Technical Chamber (ETEK) – so that all necessary declarations and applications can be submitted in time, within the specified deadlines.

The Government's, as well the House of Representatives', expectations, are to provide a framework for the legalisation of building irregularities that is as simple, brief and direct as possible, so that chronic problems and bottlenecks can be satisfactorily resolved. For this purpose, all Authorities involved are expected to process relevant applications in a positive and supportive spirit, taking into account the objectives that have been set at the outset, in order to overcome the problematic state of affairs that has arisen over the last decades for many different reasons.

At the same time, citizens intending to take advantage of the considerable opportunities offered by the amended legislation should submit complete and accurate applications, so as to facilitate and accelerate their processing and evaluation by the Authorities. Diligence is expected and required by all parties involved (applicants, professionals, Planning and Building Authorities and the Land and Surveys Department), if chronic problems are to be resolved.

The Bulletin is published in order to assist in the understanding of the opportunities presented by the current legislation. It does not, however, replace the laws, and in the case of any conflict, legislation shall override its contents.

KEY FEATURES OF THE LEGISLATION

The key features of the amended legislation, which clarify the aspirations of the system introduced, are the following:

- (a) The legality of the building is no longer a prerequisite for the issuing of an updated title deed. It is made possible for a certificate of registration to be issued for a building with certain irregularities; however, these irregularities are to be recorded on the title deed.
- (b) Updated title deeds can be issued, despite any building irregularities, provided that an application is submitted to the Building Authority, together with an accurate description of the building as well as any irregularities that may appear, in comparison to the building or the planning permit issued.
- (c) The issuing of a title deed with notes does not render the relevant building legal. Where irregularities exist, substantial or otherwise, the Building Authority and/ or the Planning Authority, and/ or the Director of the Land and Surveys Department, are empowered to take measures against the owner, so that he can be persuaded to fulfil all obligations arising from the legislation and the permit.
- (d) The owner of the development, as well as the supervising engineer, are obliged to inform the Building Authority, within a specified period, as to the completion and beginning of use of the building, and to any alterations which may not conform with approved plans and conditions of the permits.
- (e) The right to activate necessary procedures for the legalisation of the development or for the issuing of updated title deeds, is extended – apart from the owner – to the purchaser (under certain conditions), as well as to the Competent Authority (Planning Authority, Building Authority, or the Director of the Land and Surveys Department). Consequently, the owner is

no longer the only party that can invoke these procedures, particularly in cases where the owner is reluctant or unwilling to fulfil his obligations, as these arise from the conditions of the permits he has previously secured.

- (f) Updated title deeds are issued in the name of the original owner, and not in the name of purchasers. Authorities involved in the procedure do not have the power to transfer property rights to purchasers, without the owner's consent. However, it is of crucial importance, that separate title deeds are issued for individual units of a larger development, as this facilitates significantly the purchaser to invoke the right of specific performance of the contract of sale, through action taken in the Courts, against the vendor. The transfer of property to purchasers is performed by the registered owner, either voluntarily, or by an Order of the Court, issued at the request of the purchaser.
- (g) Concerned Authorities shall inform each other directly on any actions taken towards the legalisation of the buildings, and will not depend on the owner's initiative.
- (h) In all three amended laws, Competent Authorities (Planning Authority, Building Authority and the Director of the Land and Surveys Department) are empowered to impose administrative fines, in cases where the owner is reluctant or unwilling to submit the required declarations or applications for the legalisation of buildings, or irregularities in buildings, or for the issue of certificates of approval or certificates of unauthorised works or updated title deeds. Administrative fines are considered to be the means for obliging those parties with a legal responsibility to comply with their obligations by law. It is expected that strict administrative fines will definitely have a major impact on wrongdoers. Consequently, as a result of the incentives provided, but also in view of the risk of heavy administrative fines being imposed, all owners have a real interest in using the potential provided by amended legislations.

THE TOWN AND COUNTRY PLANNING LAW

PERMANENT PROVISIONS

1. The validity period of a planning permit is set by a condition attached to the permit and depends on the nature and scale of the approved development. If such a condition is not imposed, the planning permit is valid for a period of three years.
2. The validity of a planning permit can be extended for time periods considered by the Planning Authority as justified, depending on the nature and the scale of the development, provided that there have been no amendments to the provisions of the Development Plan, which are relevant to the development under consideration. The same applies where the implementation of the development has progressed to an extent that can be considered as irreversible.
3. A planning permit is automatically extended for one year, if a relevant application submitted to that effect is not decided.
4. The total validity period of a planning permit (including all extensions granted) should not exceed 8 years for one residential unit or change of use. For developments of a larger scale, this period may be up to 12 or 18 years, depending on the type and nature of the development.
5. These amendments will significantly reduce bureaucratic and administrative procedures, as well as the respective burden on Authorities and citizens and businesses alike.

TEMPORARY PROVISIONS

1. Temporary provisions aim at enabling the legalising of irregularities of a certain scale and significance on buildings that existed on April 8, 2011, provided that a planning permit and/ or building permit had been granted in the past. The law defines what is considered as an «existing building» and it is important that this definition is carefully studied (article 45A, paragraph (1) of the amending Law).

2. Temporary provisions can be applied even if the planning permit and/ or building permit have expired. This specific provision is of significance for the benefit of the applicant.
3. The scale and significance of the irregularities that can be legalised are defined by the provisions of the law. Not any irregularity, irrespective of its scale, can be legalised. In general, it is possible for the following irregularities to be legalised (these are generally of a larger scale than the respective ones that can be legalised through the provisions of the Streets and Buildings Regulation Law):
 - (a) Existing additions or alterations to an existing building resulting in:
 - (i) Increase of the approved plot ratio (of the building or the individual units) up to 30% of the approved covered area, of which only 10% could be allocated outside the approved shell of the building. This 10% (outside the approved shell of the building) refers to the sum of all additions and not specifically to any individual unit exclusively.
 - (ii) Increase in the height, number of storeys (floors) or the coverage ratio of the building.
 - (iii) Differences in the approved general layout of the development.
 - (iv) Failure to comply with the minimum required distances from the property boundaries or between buildings.
 - (b) Change of use of existing small-scale development, provided that the new use is more desirable than the existing and it does not adversely affect to a considerable extent the amenities of the area.
 - (c) Reduction in the surface and the dimensions of existing plots, up to 20% of the surface area deriving from the designated plot ratio.
 - (d) Failure to complete part of the approved development (building or division of land) or incorrect infrastructure construction with respect to the permit's terms and conditions or non-compliance with the permit's conditions related to the provision of public infrastructure or non-compliance with the permit's terms and conditions regarding the provision of suitable and adequate parking spaces (up to 10% of the number of parking spaces approved).

4. The Law does not apply where any existing development was granted a planning permit through departure from the provisions of the Development Plan, under article 26 of the Town and Country Planning Law.
5. Under the temporary provisions of the Law, an application, can be submitted either by the holder of the original permit, or, if this person is unwilling or reluctant to cooperate, any interested party with respect to the development.
6. Temporary provisions apply to residential/second-home developments, tourist complexes, commercial developments (up to 1000 sq.m.), mixed residential/second-home and commercial developments (where the predominant element of the development is the residential use), and to building plots (produced through the division of land). Legislation does not apply to developments other than the above. The legalisation of irregularities in such developments may be sought, only, through the process of applying for a planning permit through departure from the provisions of the Development Plan, under article 26 of the Law.
7. A prerequisite for the application of the temporary provisions of the Law is that the possession, use and enjoyment of each individual separate unit (in building complexes or apartment blocks) are fully secured, and that there is no significant adverse effect on the amenities of neighbouring/ surrounding properties and uses.
8. The Law defines obligations regarding the notification of applications for the legalisation of irregularities. It also provides for the right of neighbours to submit their views or objections with respect to the application, and requires the Planning Authority to publish relevant decisions.
9. The Law defines a six-month period from April 8, 2011 for the submission of a statement of intent by owners of buildings with irregularities. Such a statement can be submitted by purchasers of individual property units (second homes or apartments) where the owner himself is not willing to do so.

10. This statement is simple, and is submitted to the Ministry of the Interior. It contains general information that is necessary so as to ensure that the irregularities existed on April 8, 2011, and is attested by an affidavit provided by a qualified person, member of the Scientific and Technical Chamber of Cyprus (ETEK).
11. Any person not submitting a statement of intent within the specified period, which expires on October 7, 2011, will not have the right to make use of the temporary provisions of the Legislation. This, of course, does not apply to persons submitting, directly, an application for planning permit (instead of a statement of intent) to the Planning Authority until October 7, 2011, or those who have already submitted an application to the Building Authority for a certificate of approval and have not yet been informed of the Authority's decision. It should be noted, that the statement of intent must not be confused with the application for planning permit, which is required in all cases.
12. A fixed three-year period, expiring on April 7, 2014, is defined, for the submission of applications making use of the temporary provisions of the Legislation, only where a statement of intent has already been submitted in time. Documents and drawings submitted with the application are listed in the relevant application form.
13. If the approved surface of a building or unit in a building (e.g. apartment or second home) is exceeded, a compensation levy will be imposed on the owner or purchaser, which will be equivalent to the market value of the area in excess. These values will be determined on the basis of general estimates carried out by the Department of Land and Surveys, which will be published by an Order of the Minister of the Interior. It will be also possible to compensate for these values through the transfer of development rights from listed buildings or other private property.
14. A 20% discount on the compensation levy is set for all applications submitted within the first year period, and a 10% discount for applications submitted within the second year of the implementation of the provisions of the law.

This arrangement will serve as an incentive for early submissions. No discount will be granted for applications submitted within the third year period.

15. All compensation levies will be managed by the Local Authorities and used for projects for the upgrading of the environment in their administrative area.
16. In certain cases, additional compensation levies or charges may be imposed, so that any adverse effects caused by the development permitted may be mitigated.
17. In cases of developments consisting of a number of units, it is desirable that the statements of intent, or planning applications, are submitted jointly by as many co-owners or purchasers as possible, so that procedures could be sped up.
18. In order to discourage future irregularities Planning Authorities have the power to impose administrative fines. Such fines may also be imposed on a planning permit holder not taking the steps required to legalise irregularities.

THE STREETS AND BUILDINGS REGULATION LAW

PERMANENT PROVISIONS

1. In those cases where a development consists of more than one units (e.g. apartment blocks, second-home complexes), it is now mandatory that an application for a building permit is submitted along with an application for the division of the property. Such an application for the division of the property shall specify all constituent parts (elements) of each unit (e.g. parking spaces, storage rooms, co-owned areas of the building, etc).
2. For the first time, Building Authorities are empowered to issue a building permit even when certain differences of a small scale and significance exist, with respect to the planning permit granted. Such variations are defined in the legislation.
3. The owner, as well as the supervising engineer appointed by the owner, are obliged to notify the Building Authority of the time when a building is

completed or put into effective use. In addition, both parties have the responsibility to inform the Authority of any differences in the building, as it was completed, as compared to the permit issued.

4. The Building Authority is empowered to impose administrative fines on owners who fail or are unwilling to apply for a certificate of approval or to legalise the building.
5. The Building Authority may issue a certificate of approval, even if a planning permit or a building permit has expired. The certificate of approval has the effect of a building permit.
6. A certificate of approval may be issued without any notes or with notes concerning irregularities in the building or part of the building. Such a certificate of approval, with or without notes, may even be issued for part of the development, provided that this part can function properly and independently.
7. In cases of irregularities of a very severe nature, the Building Authority is empowered to issue a certificate of unauthorised works, requiring the Department of Lands and Surveys to register a note on the title, prohibiting the transfer of the property to another person.

TEMPORARY PROVISIONS

1. Temporary provisions allow the legalising of irregularities of a certain scale and significance that existed on April 8, 2011, on existing buildings. The definition of the term «existing building» is given in the law.
2. Temporary provisions of article 10D of the Streets and Buildings Regulation Law do not apply in cases of irregularities in tourist developments, industrial (heavy or light) or multi-purpose/ commercial developments.
3. The scale and significance of the irregularities that can be legalised are defined by the provisions of the law. Not any irregularity, irrespective of its scale, can be legalised.

4. Specifically, the temporary provisions of the law can apply where the approved covered area is not exceeded by more than 10%, provided that half of the area in excess relates to alterations executed within the shell of the building.
5. An application, under the temporary provisions of the Law, can be submitted either by the holder of the original permit, or by any other person with a vested interest with respect to the development. The process can be activated by the Building Authority, without any application being submitted by any interested party.
6. A prerequisite for applying for the legalisation of irregularities in a building, is that the possession, use and enjoyment of individual units (in building complexes or apartment blocks) are fully secured, and that there is no significant adverse effect on the amenities of surrounding properties and uses.
7. The Law defines obligations regarding the notification of applications for the legalisation of irregularities. It also enables neighbours to submit their views or objections with respect to the application, and requires the Building Authority to publish relevant decisions.
8. Applications, under the temporary provisions of the law, are submitted to the Building Authority, which prepares a comprehensive report to be submitted for consideration and decision to the three-member Committee. In cases of developments consisting of a number of units (second-home developments or apartment blocks), it is preferable that applications are submitted jointly by as many co-owners (or purchasers) of the property as possible, so that procedures could be sped up.
9. The Law defines a six-month period from April 8, 2011 within which the owner or the purchaser of a building with irregularities must submit a statement of intent for legalising irregularities in the property.
10. Any person not submitting a statement of intent within the specified period, will not have the right to make use of the provisions of the Legislation.

11. The Law defines a fixed three-year period for the submission of applications making use of the provisions of the Legislation, only where a statement of intent has already been submitted in time or where the application itself (rather than a statement of intent) has been submitted within the specified six-month period.
12. If the approved surface of a building or unit in a building (e.g. apartment or second home) is exceeded, a compensation levy will be imposed on the owner or purchaser, which will be equivalent to the market value of the area in excess. These values will be determined on the basis of general estimates carried out by the Department of Land and Surveys that will be published by an Order of the Minister of the Interior. It is also possible that these values are compensated through the transfer of development rights from listed buildings or other private property.
13. A 20% discount on the compensation levy is set for all applications submitted within the first year period, and a 10% discount for applications submitted within the second year of the implementation of the provisions of the law. This arrangement will serve as an incentive for early submissions. No discount will be granted for applications submitted within the third year period.
14. All compensation levies will be managed by the Local Authorities and used for projects for the upgrading of the environment in their administrative area.
15. In certain cases, additional compensation levies or charges may be imposed, so that any adverse effects caused by the development permitted may be mitigated.

THE IMMOVABLE PROPERTY (TENURE, REGISTRATION & VALUATION)

LAW

1. An application for an updated title deed is submitted by the registered owner of the property, even if a planning permit or a building permit has expired. Documents submitted with the application are listed in the relevant application form.

2. If the registered owner of the property neglects to apply for the issue of an updated title, the Director of the Department of Lands and Surveys may decide, depending on the time that has elapsed since the diversification of the ownership, the extent or the scope of the diversification and the number of the persons affected, to issue the title or titles, either following an application by a person with a vested interest with respect to the property, or without any application. In such cases, the Director may impose an administrative fine on the owner who fails to act on his own initiative.
3. If the Building Authority issues a certificate of approval with notes or a certificate of unauthorised works, the updated title may be issued with notes recording the irregularities or prohibiting the transfer of the property to another person. Inevitably, such notes will affect the value of the property.
4. A note or a prohibition may be cancelled at a later stage, provided that the irregularities in the building are legalised or removed.

IMPORTANT NOTE:

The contents of this Bulletin do not in any way replace texts of the Town and Country (Amended) Law 2011, the Streets and Buildings Regulation (Amended) Law 2011 and the Immovable Property (Tenure, Registration and Valuation) (Amended) Law 2011. In case of contradiction between the contents of the Bulletin and these Laws, legislation takes precedence over this text.

PLANNING AMNESTY BULLETIN – MAY 2011