

3. Law of Property and Obligations

Amendment of Unit Ownership Act

Law No.140, December 11, 2002 (Effective on June 15, 2003).

Background:

Today the number of condominiums in Japan total to about 4 million and it keeps increasing by more than 100 thousand every year. About 10 million people live in such condominiums. It is the unit ownership act that regulates the relationship between the residences in a condominium. This Act was enacted in 1962, in the context that, after World War 2, the Japanese economy grew rapidly and the populations in the cities increased sharply. Then condominiums came to prevail mainly in urban areas. Later this Act was wholly amended in 1983.

By the way, condominium has become one of the most important forms of property about building, but it follows that the disputes concerning the administration of condominiums have increased and the improvement of it has been demanded. The increase in rundown condominiums has followed the increase in condominiums, but it has been said that such condominiums cannot be reconstructed smoothly under the actual law of condominiums.

Then this great amendment of the unit ownership act was carried, in order to improve the administration of condominiums and make the reconstruction of condominium smoother.

Main Provisions:

In this Amendment, things can be divided into principally two parts. One part concerns the improvement in the administration of condominiums, and the other the smoothness of the reconstruction of condominiums.

We can note the things concerning the improvement of the administration as follows.

First, in order to fix the common space smoothly, the Amendment, with the aim of improving the administration, prescribes that when the form and faculty of the common space will not be changed, the special

majority rule, which needs three quarter approval of owners and votes, is unnecessary, despite the cost (article 17 section 1).

Second, in order to improve the administration, the Amendment admits to administrators the authority to demand and accept damages concerning injury to the common place, and extends their faculty (article 26 sections 2, 4, article 47 sections 6, 8).

Third, in order to make the articles fair, which are the conventions about the administration and use of condominiums, the Amendment prescribes that the articles be enacted or changed for the equity of owner's interests, considering totally the form, area, locality, aim and condition of use and value of the condominium, and all other circumstances (article 30 section 3).

Fourth, the Amendment permits that the record of the owner's assembly can be established and the vote taken in electronic form such as E-mail, so that the administration will be convenient for the owners (article 30 section 5, article 33 section 2, article 42 sections 1, 2, 4, article 39 section 3).

Fifth, the Amendment answers the request of the associations in small condominiums, and rescinds the condition that more than 30 owners are necessary for the association to be a corporation (article 47 section 1).

Next, the Amendment loosens the conditions for the reconstruction of a condominium as follows, with the aim of achieving smoothness of reconstruction.

First, in the Amendment, with respect to article 62, which requires the agreement to reconstruction in the assembly of owners, the condition for reconstruction that it costs too much to keep or amend the function of the condominium is rescinded. That condition has been criticized for its lack of clarity and for inviting disputes.

Second, in the Amendment article 62, the condition that the new condominium should be reconstructed on the same area as the old one is changed to one that it may be reconstructed on partially the same area, and the condition that the aim of the new one should be the same as that of the old one is rescinded.

As a consequence, in the new article 62, the condominium can be reconstructed in partially the same area, when the approval of four-fifth

of the owners and votes exists.

Also the Amendment establishes rules about the reconstruction of a condominium in a neighborhood in which plural buildings exist and all owners are co-owners of this area, as follows.

First, since the unit ownership act had no rules about reconstruction in such a neighborhood, according to Civil Code article 251, all owners, who were co-owners of the area, should have agreed to the reconstruction, which becomes a change of area. Then the Amendment establishes the rule that a building in the neighborhood can be reconstructed, when the approval of four-fifth of the owners and votes in this building and the approval of three-fourth of the co-owners in the area exist (article 69 section 1).

Second, for a more constructive use of the area, the Amendment establishes the rule that all buildings in the neighborhood can be reconstructed at the same time, when the approval of four-fifth of the co-owners in the area and the approval of two-thirds of each building's owners exist (article 70 section 1).

Furthermore the Amendment applies principally to affairs that occurred before the effective date (schedule 2 section 1). Consequently it also applies to condominiums which were constructed before the effective date.

Editorial Note:

This Act is the second big amendment of the unit ownership act and its main purpose is to loosen the conditions for reconstruction. Because it is envisaged that in the recent future rundown condominiums will increase and the reconstructions of them will become a serious social problem. And though a big increase in reconstructions is uncertain, at least it is certain that condominiums can be reconstructed more smoothly. But the minds particularly should be turned to article 62. Since, according to it, a condominium can be reconstructed by majority decision, unit ownership becomes far more restricted and weaker.

Act Concerning the Smoothness of the Reconstruction of Condominiums etc.

Law No.78, June 19, 2002 (Effective on December 18, 2002).

Background:

Today condominiums widely prevail mainly in urban areas, and run-down condominiums have increased and will still increase. Then rules for the smooth reconstruction of condominiums are needed, but rules concerning the execution of a reconstruction after a decision to do so in the assembly of owners did not exist in the unit ownership act. This act establishes rules about the execution of a reconstruction and principally regulates the executor of the reconstruction and the procedure of the conversion of rights.

This Act, which makes rules about the execution of reconstruction, together with the amendment of the unit ownership act, which concerns the decision to carry out reconstruction in the assembly of owners, aims to make the reconstruction of condominiums smoother.

Main Provisions:

This Act consists of 141 articles and 7 chapters. The chapters are as follows: the first, “General Provisions”; the second, “Executor”; the third, “Reconstruction of a Condominium”; the fourth, “Surveillance of the Reconstruction of a Condominium and etc.”; the fifth, “Special Action for Promotion of Reconstruction of a Condominium which is in a Dangerous or Harmful Condition”; the sixth, “Miscellaneous Rules”; the seventh, “Penal Regulations.”

Firstly, this Act regulates for the executor of a reconstruction in the second chapter.

In this Act the execution of reconstruction is assigned to the association of reconstruction (article 5 section 1). It is organized and incorporated, in order to execute the reconstruction based on the decision to carry out a reconstruction in the assembly of owners. This Act makes rules concerning the association as follows. For example, the owners who approved the reconstruction establish a certificate of incorporation and a plan, and the association is incorporated through a permit from the governor (article 9), and these owners become the members of the

association when it is incorporated (article 16). And there are also other rules concerning the contents of the certificate of incorporation and plan, the subjects to do with the administration, such as the executive and assembly, the subject to do with dissolution, etc.

In addition, it is also provided that the owner or one who is given consent by the owner can execute the reconstruction alone or jointly, as a personal executor (article 5 section 2). In that case, the reconstruction is executed through the convention by interests, not through decision-making by a group like an association.

Secondly, this Act regulates the conversion of rights in third chapter.

The conversion is to convert the rights concerning the condominium, such as the unit ownership, the usufruct of the area, hypothec and lease to the reconstructed condominium without their extinction, when the condominium is reconstructed. According to this Act, these rights are converted as follows. First, the registration for starting the procedure of conversion (article 55); second, the making of the plan for conversion; third, permission by the governor for it (article 57); fourth, the conversion of rights in compliance with the plan.

Finally, this Act makes rules concerning the action for the promotion of reconstruction of a condominium which is in a dangerous or harmful condition in chapter 5.

And in this chapter, it is provided that the executive power advises the reconstruction of a rundown condominium which is in a dangerous or harmful condition (article 102) and takes certain measures based on the law such as the promotion of reconstruction.

4. Law of Civil Procedure and Bankruptcy

The Corporate Reorganization Law

Law No.154, December 13, 2002 (Effective on April 1, 2003).

Background:

The Corporate Reorganization Law was enacted in 1952 to provide a reconstruction type bankruptcy procedure equally as effective as