



**WYDZIAŁ PRAWA
i ADMINISTRACJI**

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The legal position of the reverse mortgage borrower in Polish law

SUMMARY

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The subject of the work is the analysis of the legal position of a reverse mortgage borrower in Polish law. Currently, despite the existence of a statutory basis for offering a reverse mortgage, no service provider has decided to introduce this service to their offer. Therefore, the considerations included in the doctoral thesis are mainly limited to the analysis of the existing regulations, without the possibility of assessing their practical application.

A reverse mortgage is a new and little-known service in Poland. As part of the introduction to the considerations constituting the essence of the work, the characteristics of equity release services, which include a reverse mortgage, are presented. A significant conclusion resulting from the introductory remarks is to define the specificity of seniors who use equity release services. This fact is crucial for the assessment of the provisions regulating the legal position of the reverse mortgage borrower.

The first chapter presents the socio-demographic situation in Poland. This analysis shows several important conclusions for the considerations contained in the work. Polish society is aging and this tendency is unlikely to change in the coming decades. The current state of affairs leads to a deepening of the insufficiency of the pension system, which will result in lowering the amount of pension benefits. The Act on Reverse Mortgage is one of the first legal acts in Poland aimed at creating opportunities for Polish seniors to obtain additional funds supplementing their income from pensions.

The second chapter shows the rules of operation of reverse mortgages in the United States of America (USA), France and Spain. This service does not have international regulations, and there are also no provisions regulating the functioning of reverse mortgages in the European Union. Introducing the experiences of other countries, including the USA - the largest reverse mortgage market in the world - allows for the extension of the criteria for assessing Polish regulations.

Chapter three of the doctoral thesis focuses on the presentation of the Act on Reverse Mortgage in a systemic aspect. The Polish legislator has decided to regulate the rules of providing equity release services in the loan model in one legal act. The existing regulation does not apply to the entire market of equity release services, as equity release services in the sales model still are not regulated on the statutory level.

They are provided on the basis of the rule of freedom of contract by entities that are not subject to state supervision.

The main part of the considerations of the doctoral thesis has been divided into three chapters. Chapter four analyses the procedure of concluding a reverse mortgage agreement. Particular attention was given to the rules of implementing the concept of the so-called protection through information. The provisions governing the information obligation, preceding the conclusion of a reverse mortgage contract, are much less detailed than in other acts on credit services. The standard of protection for a reverse mortgage borrower is much lower than, for example, in the Consumer Credit Act. The Polish legislator, while establishing the information obligation, have not taken into account in the proper manner the specificity of the target borrowers, which will be the elderly.

Chapter five and six discuss the rules governing a reverse mortgage contract. The separation of specific rights and obligations of the borrower in the Act on Reverse Mortgage justifies the exclusion of this matter in a separate chapter, therefore the analysis of the contract was divided into two chapters.

The Act on Reverse Mortgage lists a number of elements that should be included in the document of a reverse mortgage contract. This solution is undoubtedly beneficial for the borrower, as it provides him with access to full information about the terms of the contract. Nevertheless, the applicable regulations leave a lot of space for the arrangement of the content of the agreement based on the rule of freedom of contract. Thus, the risk of creditors imposing unfavourable contract terms on borrowers is real. At the time of completing this work, an important issue is also differentiating the scope of protection of borrowers depending on whether they have the status of a consumer, and in the light of the changes to be introduced in the law, this problem will most likely be eliminated in the near future.

Chapter six analyses the specific rights and obligations of a reverse mortgage borrower. The purpose of considerations concerning the borrower's rights is to verify to what extent these rights strengthen the position of the borrower under the reverse mortgage contract. Hedging a borrower's position by granting him various options to terminate the contract does not seem to be entirely consistent with the purpose of a reverse mortgage, which is concluded for life.

Among the statutory obligations of the borrower, the need to keep the property securing the loan in a proper technical condition deserves special attention. This obligation, established in the interest of the creditor, may in practice be difficult to fulfil over the entire loan period, as the borrower's health and financial condition may deteriorate over time.

In the current legal situation, a reverse mortgage seems to be a rather risky way for the elderly to obtain additional cash. If this service is to become a safe source of additional capital for seniors, it seems necessary to amend the existing regulations.

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