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## **AN EVALUATION OF THE TRANSFORMATION OF THE PERPETUAL USUFRUCT RIGHT TO THE REAL ESTATE PROPERTY RIGHT\***

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**ABSTRACT.** This article presents the analysis of profitability of the transformation of the perpetual usufruct right into the property right, at various moments of binding of this right, on the basis of the empirical formula presented in the respective act of law – the Ordinance of the Council of Ministers, concerning real estate appraisal and the estimate statement. It has been analysed how the fee for the transformation method of the perpetual usufruct right to the property is modified depending on the adopted rate of capitalization, the interest rate on the annual fee, and the number of remaining years of the unused perpetual usufruct right.

**Key words:** perpetual usufruct, interest rate on the annual fee, capitalization rate

### **Introduction**

The perpetual usufruct right is one of the property rights and in the hierarchy of rights it is placed between the right of property and limited property rights. This right is disposable, hereditary and transferable. It differs from the property right in this respect that it is limited in time to the period of 40 to 99 years<sup>1</sup> and it is connected with fees: the first fee ( $O_1$ ) and annual fees ( $O_t$ )<sup>2</sup> and the use of the real estate has to be consistent with the contract written in the form of a notarial deed concerning the acquisition of this right (**Gniewek** 2000). This right refers only to land property and is not applicable to the

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\* The paper is funded by the science budget within the interdisciplinary project in 2007-2008 No: 4/04/WI/07/AR-UAM.

<sup>1</sup> Art. 236 of the Civil Code (Dz. U. PRL 16, item 93 with later amendments).

<sup>2</sup> The amount of annual fees for perpetual usufruct is dependent on the aim, stipulated in the contract in the form of a notarial deed, for which the real estate was put out. Rates of annual fees range from 0.3 to 3%. Art. 72 para. 1 of the Act of 21.8.1997 on real estate management (Dz. U. RP 261, item 2603, unified text).

property of a flat or a house or building. The perpetual usufruct right may be established by the State Treasury or a unit of the local government<sup>3</sup>, although in practice in the latter group it was the commune, as the district and province due to their scarce real estate resources rarely put out land property to perpetual usufruct (Fig. 1, 2). Main legal regulations concerning the perpetual usufruct right are contained in the Civil Code and the Act on real estate management, hereinafter referred to as the Act.

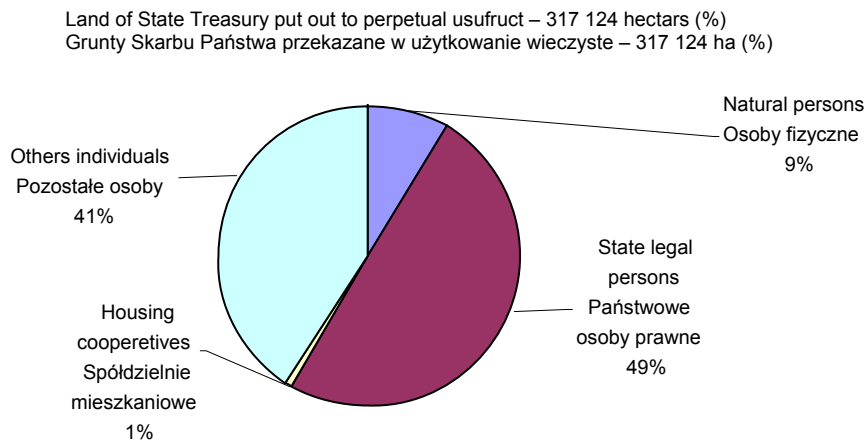


Fig. 1. Land of State Treasury put out to perpetual usufruct

Source: *Nieruchomość...* (2005).

Ryc. 1. Grunty Skarbu Państwa przekazane w użytkowanie wieczyste

Źródło: *Nieruchomość...* (2005).

At present legal acts make it possible to replace the perpetual usufruct right and purchase the property right, when the perpetual usufructuary is a natural person and the real estate was developed for housing or garages, but also such an opportunity pertains to agricultural real estates<sup>4</sup>. Legal regulations are given in the act on the transformation of the perpetual usufruct right into the property right to real estate<sup>5</sup>. The value of the perpetual usufruct right is as a rule lower than that of the property right. The purchase of the property right to a real estate is connected with the determination of the value of both rights and next the difference between these rights, being the object of purchase.

<sup>3</sup> Art. 232 § 1 of the Civil Code.

<sup>4</sup> The transformation of the perpetual usufruct right into the property right to a real estate may also be requested by natural and legal persons being owners of premises, which share in the common real estate includes the perpetual usufruct right, as well as by housing cooperatives being owners of housing buildings or garages, and natural and legal persons being their heirs. A strict classification showing who and in what cases may apply for the transformation of the perpetual usufruct right is given in art. 1 of the Act on the transformation of the perpetual usufruct right into the property right to real estate.

<sup>5</sup> The Act of 29.07.2005 on the transformation of the perpetual usufruct right into the property right to real estate (Dz. U. RP 175, item 1459).

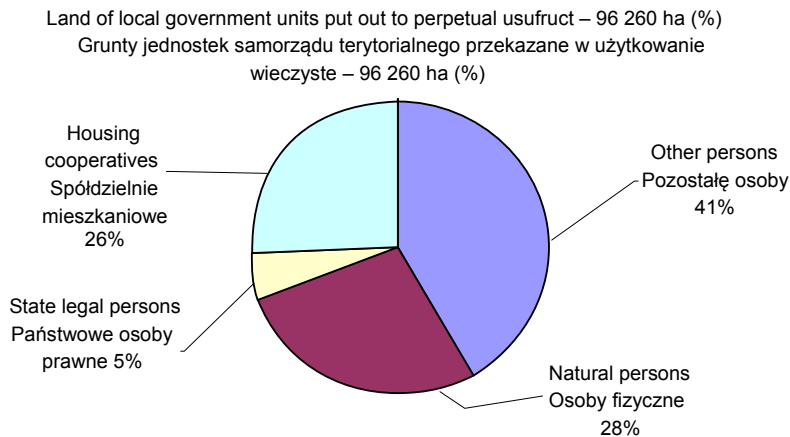


Fig. 2. Land of local government units put out to perpetual usufruct

Source: Nieruchomość... (2005).

Ryc. 2. Grunty jednostek samorządu terytorialnego przekazane w użytkowanie wieczyste

Źródło: Nieruchomość... (2005).

On the local market transactions concerning the property right are more common, while rights connected with perpetual usufruct are rarely the object of sale transactions. Thus the determination of the value of the perpetual usufruct right based on the sale price of this right is not always possible. For this reason it is frequently impossible to determine on the basis of a market analysis the value of the perpetual usufruct right on the basis of the value of the property right, since the market proportions between these rights may not be determined. The legislation allows for the solution of this problem based on a formula, which expresses a dependence between the value of the perpetual usufruct right (unknown) and the value of the property right (known).

The aim of this study was to conduct a methodological analysis of the empirical formula used to determine the fees connected with the transformation of the perpetual usufruct right into the property right to a real estate. It was attempted to determine how this fee changes, depending on:

- the number of remaining years of the unused perpetual usufruct period,
- the capitalization rate,
- the percentage rate of the annual fee.

A complementary aim of this study was to determine the profitability of the purchase of the property right at different time points of the perpetual usufruct. Benefits and costs incurred by the perpetual usufructuary due to the transformation of the perpetual usufruct right were analysed depending on the stage of the perpetual usufruct and the amount of the annual fee. This makes it possible to consider what benefits and losses in such situations are incurred by the previous owner, i.e. the State Treasury or a local government unit.

## Materials and method

The paper is a methodological study, in which we may follow changes in the fee charged for the transformation of the perpetual usufruct right into the property right based on the correction index proposed by the legislator. The analysis includes possible cases when the perpetual usufructuary may transform the perpetual usufruct right into the property right in accordance with the Act on the transformation of the perpetual usufruct right into the property right, but also in those cases when the Polish law does not allow it, but potentially such a situation may be possible in the future.

The amount of the fee for the transformation of the perpetual usufruct right into the property right may change depending on the number of years for which perpetual usufruct was established, ranging from 40 to 99 years ( $T$ ), the length of the unused period ( $t$ ), the percentage rate of the annual fee ( $Sr$ ), as well as the value of the capitalization rate ( $R$ ), which may range from 0.09 to 0.12%. As much as values  $T$  and  $t$  as well as  $Sr$  are obvious, since they result from the contract for the real estate to be put out to perpetual usufruct, the value of the capitalization rate needs to reflect the risk on the real estate market in relation to the changes in the property right to land.

If when determining the market value of land property as the object of perpetual usufruct it is not possible to apply the comparative approach on the basis of prices for the land under perpetual usufruct, this value is established as the product of the value of the undeveloped land property as the object of the property right and the correction index calculated according to the following formula<sup>6</sup>:

$$W_k = \left(1 - \frac{Sr}{R}\right) \times \frac{t}{T} + 0.25 \times \frac{T-t}{T}$$

where:  $W_k$  – the correction index,  $Sr$  – the percentage rate of the annual fee not bigger than 3%,  $t$  – the number of remaining years of the unused perpetual usufruct period,  $T$  – the number of years for which perpetual usufruct was established,  $R$  – the average capitalization rate established on the basis of the real estate market survey by a property appraisal expert, not lower than 0.09 and not bigger than 0.12.

The study contains an analysis of 492 cases when the real estate is put out to perpetual usufruct for 40 years ( $T = 40$ ), with capitalization rates of 9, 10, 11 and 12% and percentage rates of annual fees of 0.3, 1 and 3%. It is also necessary to take into consideration the moment in which this right expires for  $t = 0$ , thus it will be recorded as 41, since it is  $40 + 1$ . In this way when considering possible solutions this may be written as:  $O(Sr, R, T, t) = 3 \times 4 \times 41 = 492$ .

<sup>6</sup>The ordinance of the Council of Ministers concerning the appraisal of real estate and preparation of estimate statements, § 29 item 3 (Dz. U. RP 207, item 2109).

### The amount of fees for the transformation of the perpetual usufruct right into the property right depending on the number of remaining years of the unused perpetual usufruct period

The Table 1 presents parameter values – what percentage of property right consists of fees for the transformation of the perpetual usufruct right into the property right at different moments of the perpetual usufruct period. This simulation was performed at an assumption that the period of the perpetual usufruct right  $T$  was established at 40 years, the average capitalization rate  $R$  was 12%, while  $S_r$  was 1% and 3%, respectively.

**Table 1**

**The amount of fees for the transformation of the perpetual usufruct right into the property right depending on the number of remaining years of the unused perpetual usufruct right for:  $T = 40$ ,  $S_r = 1\%$  and  $S_r = 3\%$ ,  $R = 12\%$**

**Kształtowanie się wartości opłaty za przekształcenie prawa użytkowania wieczystego w prawo własności w zależności od liczby lat niewykorzystanego użytkowania wieczystego dla:  $T = 40$ ,  $S_r = 1\%$  i  $S_r = 3\%$ ,  $R = 12\%$**

t	0	3	5	10	20	30	40
$S_r = 1\%$	75.0%	70.0%	66.7%	58.3%	41.7%	25.0%	8.3%
$S_r = 3\%$	75.0%	71.3%	68.8%	62.5%	50.0%	37.5%	25.0%

Source: the authors' study.

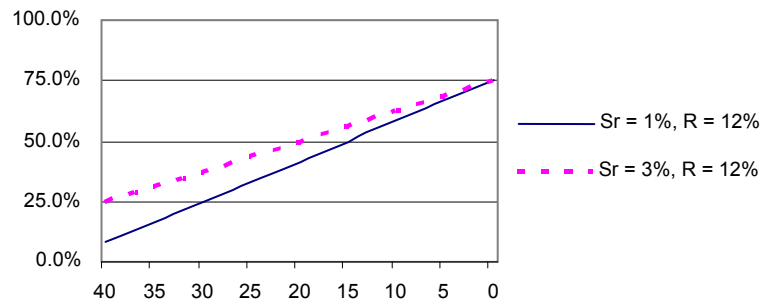
Źródło: opracowanie własne.

The table given below presents selected cases, for the purpose of a graphic presentation (Fig. 3) in the graph all possibilities were adopted for  $t$  from 0 to 40 in both situations for  $S_r = 1\%$  and  $3\%$ .

The level of fees for the transformation of the perpetual usufruct right into the property right has been increasing steadily in the course of years. At the time a land property is put out to perpetual usufruct, for  $S_r = 1\%$  and  $S_r = 3\%$  it is 8.3 and 25%, respectively. In turn, the closer the date of expiry of this right the more the value of perpetual usufruct decreases and as a consequence the fee for the transformation of the perpetual usufruct right increases. In the last year of perpetual usufruct (for  $t = 0$ ) the value of this right is 25% of the property right for each possible case, irrespective of the capitalization rate and the percentage rate of the annual fee, which in turn results in the fact that the amount of the fee is equivalent to 75% of the property right (**Dobek and Wielicki 2006**).

It results from the above that it is most profitable to apply for the transformation of the perpetual usufruct right into the property right in the initial period of perpetual usufruct, as the fee for the transformation is much lower than in the later years. Moreover, the perpetual usufructuary pays the annual fee amounting to 0.3, 1 or 3% of the current market value, depending on the way in which a given real estate is to be used, thus the cost of having a real estate is additionally increased.

In turn, for the State Treasury and local government units an opposite variant would be more profitable, i.e. the transformation of the perpetual usufruct right at a later time,



T – the number of remaining year of unused perpetual usufruct  
liczba lat niewykorzystanego użytkowania wieczystego

Fig. 3. The amount of the fee for the transformation of the perpetual usufruct right into the property right depending on the number of remaining years of the unused perpetual usufruct period for: T = 40, Sr = 1% and Sr = 3%, R = 12%

Source: the authors' study.

Ryc. 3. Kształtowanie się opłaty za przekształcenie prawa użytkowania wieczystego w prawo własności w zależności od liczby lat niewykorzystanego użytkowania wieczystego dla: T = 40, Sr = 1% i Sr = 3%, R = 12%

Źródło: opracowanie własne.

since the fee would be much higher, and in the last year of perpetual usufruct it would be 75% of the property right<sup>7</sup>. What is more, the perpetual usufructuary would pay for a longer time annual fees being a source of revenue for the budget; what is more, in most cases the fees would be increasing, following the current market value of the real estate.

### The amount of the fee for the transformation of the perpetual usufruct right into the property right depending on the value of the capitalization rate

We will appraise the perpetual usufruct right to a building lot to be developed as a housing project (Sr = 1%), after 10 years of perpetual usufruct. The area of the lot is 1000 m<sup>2</sup>. The price for 1 m<sup>2</sup> for similar land properties in case of the property right is around PLN 100. The perpetual usufruct right needs to be priced for capitalization rates of R = 12% and R = 9%.

For R = 9%

$$Wk = \left(1 - \frac{1\%}{9\%}\right) \times \frac{30}{40} + 0.25 \times \frac{40 - 30}{40} = 0.72917$$

<sup>7</sup> A rebate may be established from the fixed fee by the State Treasury or a local government unit, as it is regulated for agricultural real estates by art. 4 item 3 of the Act on the transformation of the perpetual usufruct right into the property right to a real estate and for the other types of real estate by art. 68 of the Act on real estate management. For example in the Tarnowo Podgórze commune a rebate of usually 30% is applied.

The property right for a lot of 1000 m<sup>2</sup> is PLN 100 000, while the value of the right  $UW = 100\ 000 \times 0.82435 = 72\ 917$  PLN, thus to purchase the property right the perpetual usufructuary would pay  $(100\ 000 - 72\ 917) = 27\ 083$  PLN.

For  $R = 12\%$

$$W_k = \left(1 - \frac{1\%}{12\%}\right) \times \frac{30}{40} + 0.25 \times \frac{40 - 30}{40} = 0.75$$

The property right for a lot of 1000 m<sup>2</sup> is PLN 100 000, while the value of the right  $UW = 100\ 000 \times 0.75 = 75\ 000$  PLN, thus to purchase the property right the perpetual usufructuary would pay  $100\ 000 - 75\ 000 = 25\ 000$ .

It may be concluded from the above (Fig. 4, Table 2) that for the perpetual usufructuary it is more profitable when a higher capitalization rate is adopted in the pricing, since the fee for the transformation of the perpetual usufruct right into the property right is lower, in which situation the losing party is the previous owner – the State Treasury or a local government unit.

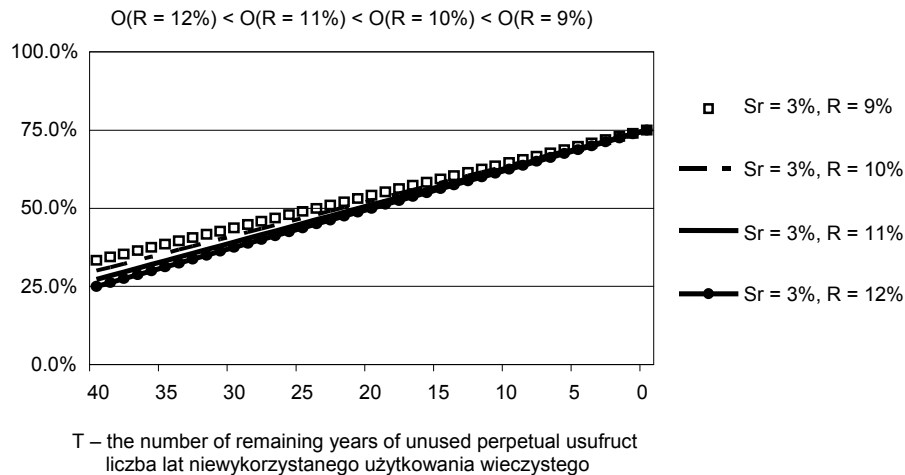


Fig. 4. The value of fees for the transformation of the perpetual usufruct right into the property right depending on the capitalization rate for  $T = 40$ ,  $S_r = 3\%$ ,  $R = 9\%$ ,  $R = 10\%$ ,  $R = 11\%$  and  $R = 12\%$

Source: the authors' study.

Ryc. 4. Kształtowanie się opłaty za przekształcenie prawa użytkowania wieczystego w prawo własności w zależności od stopy kapitalizacji dla  $T = 40$ ,  $S_r = 3\%$ ,  $R = 9\%$ ,  $R = 10\%$ ,  $R = 11\%$  i  $R = 12\%$

Źródło: opracowanie własne.

In literature concerning the determination of the value of the perpetual usufruct right there are no studies on the principles to be applied when determining the capitalization rate – is it to reflect the scale of risk, if so – what risk? – that taken by the owner of the real estate the State Treasury (or a local government unit) or the perpetual usufructuary? The table below shows how the level of the capitalization rate affects the surcharge for the transformation of the perpetual usufruct into the property right and on which elements the previous owner of the real estate – the State Treasury, a unit of the local government or the perpetual usufructuary loses or gains a profit.

Table 2

The value of fees for the transformation of the perpetual usufruct right into the property right depending on the capitalization rate for  $T = 40$ ,  $Sr = 3\%$ ,  $R = 9\%$ ,  $R = 10\%$ ,  $R = 11\%$  and  $R = 12\%$

Kształtowanie się opłaty za przekształcenie prawa użytkowania wieczystego w prawo własności w zależności od stopy kapitalizacji dla  $T = 40$ ,  $Sr = 3\%$ ,  $R = 9\%$ ,  $R = 10\%$ ,  $R = 11\%$  i  $R = 12\%$

t	0	3	5	10	20	30	40
R = 9%	75.0%	71.9%	69.8%	64.6%	54.2%	43.8%	33.3%
R = 10%	75.0%	71.6%	69.4%	63.8%	52.5%	41.3%	30.0%
R = 11%	75.0%	71.4%	69.0%	63.1%	51.1%	39.2%	27.3%
R = 12%	75.0%	71.3%	68.8%	62.5%	50.0%	37.5%	25.0%

Source: the authors' study.

Źródło: opracowanie własne.

An increase in the capitalization rate in the appraisal of the perpetual usufruct right results in a reduction of the fee for the transformation of the perpetual usufruct right, which may be recorded as:  $O(R = 12\%) < O(R = 11\%) < O(R = 10\%) < O(R = 9\%)$ . This may be followed on such an example as that presented below (Table 3).

Table 3

Profits and losses of the real estate owner and the perpetual usufructuary at the time of estimation of the fee for the transformation of the perpetual usufruct right into the property right in terms of the adopted level of the capitalization rate and duration of the perpetual usufruct period

Korzyści i straty właściciela nieruchomości i użytkownika wieczystego w momencie szacowania opłaty za przekształcenie prawa użytkowania w prawo własności ze względu na przyjęty poziom stopy kapitalizacji i czas trwania użytkowania wieczystego

Item Wyszczególnienie	State Treasury/local government unit Skarb Państwa/jednostka samorządu terytorialnego	Perpetual usufructuary Użytkownik wieczysty
Low capitalization rate Niska stopa kapitalizacji	+	-
High capitalization rate Wysoka stopa kapitalizacji	-	+
Duration of perpetual usufruct Czas trwania użytkowania wieczystego		
short – krótki	-	+
long – długi	+	-

+ gains, - losses.

Source: the authors' study.

+ zyskuje, - traci.

Źródło: opracowanie własne.



### The amount of the fee for the transformation of the perpetual usufruct right into the property right depending on the percentage rate of the annual fee

When making decisions on the commitment of capital the investor may consider the selection of a real estate from the point of view of the manner in which it is used. Thus the amount of fees for the transformation of the perpetual usufruct right into the property right is presented below in terms of the manner in which the real estate is used (Fig. 5). It also needs to be mentioned here that the manner in which the real estate is used results in a specific annual rate.

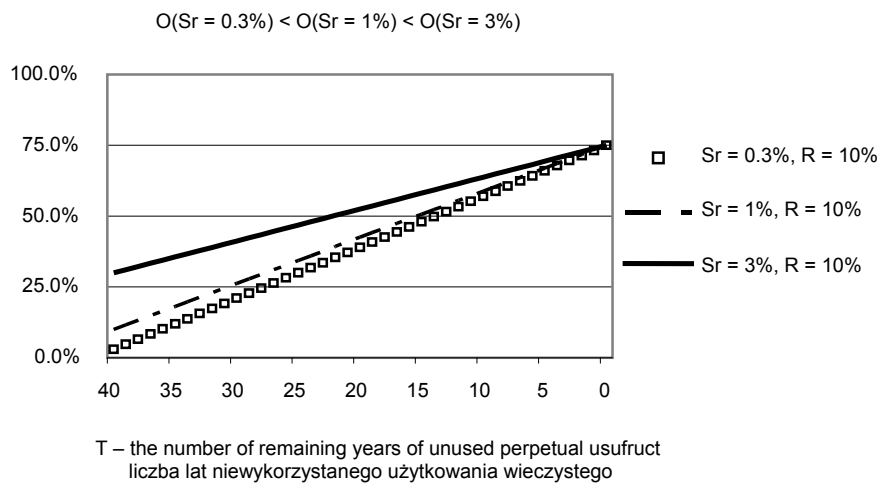


Fig. 5. The amount of fees for the transformation of the perpetual usufruct right into the property right depending on the percentage rate of the annual fee for perpetual usufruct for  $T = 40$ ,  $Sr = 0.3\%$ ,  $Sr = 1\%$  and  $Sr = 3\%$ ,  $R = 10\%$

Source: the authors' study.

Ryc. 5. Kształtowanie się opłaty za przekształcenie prawa użytkowania wieczystego w prawo własności w zależności od stawki procentowej opłaty rocznej za użytkowanie wieczyste dla  $T = 40$ ,  $Sr = 0,3\%$ ,  $Sr = 1\%$  i  $Sr = 3\%$ ,  $R = 10\%$

Źródło: opracowanie własne.

In the graph a dependence may be observed that an increase in the percentage rate of the annual fee for perpetual usufruct results in an increase of the fee for the transformation of the perpetual usufruct right into the property right, which may be written as:  $O(Sr = 0.3\%) < O(Sr = 1\%) < O(Sr = 3\%)$ . The selection of the percentage rate of the annual fee does not depend on the selection of either the perpetual usufructuary or the land owner, i.e. the State Treasury or local government units, but it is obligatorily stipulated and regulated by art. 72 item 3 of the Act, which conditions the selection of percentage rates of annual fees on the aim for which the land property was put out, specified in the contract.

It results from Figure 3 and Table 4 that the perpetual usufructuary of a land property allocated in the local land development plan to investment purposes will pay for the purchase of the property right much more than if the transformation was executed under analogous conditions, referring to a property for housing purposes. The above differences become more conspicuous when the perpetual usufructuary decides to purchase the property right at a sooner usufruct time (Table 6).

Table 6

**The value of fees for the transformation of the perpetual usufruct right into the property right depending on the percentage rate of the annual fee for perpetual usufruct for  $T = 40$ ,  $Sr = 0.3\%$ ,  $Sr = 1\%$  and  $Sr = 3\%$ ,  $R = 10\%$**

**Kształtowanie się wartości opłaty za przekształcenie prawa użytkowania wieczystego w prawo własności w zależności od stawki procentowej opłaty rocznej za użytkowanie wieczyste dla  $T = 40$ ,  $Sr = 0,3\%$ ,  $Sr = 1\%$  i  $Sr = 3\%$ ,  $R = 10\%$**

t	0	3	5	10	20	30	40
Sr = 0.3%	75.0%	69.6%	66.0%	57.0%	39.0%	21.0%	3.0%
Sr = 1%	75.0%	70.1%	66.9%	58.8%	42.5%	26.3%	10.0%
Sr = 3%	75.0%	71.6%	69.4%	63.8%	52.5%	41.3%	30.0%

Source: the authors' study.

Źródło: opracowanie własne.

At a further period of perpetual usufruct of a land property, when  $t$  approaches zero, i.e. the period for which the perpetual usufruct right was established, the perpetual usufructuary, irrespective of the intended use of the property, will have to pay 75% of the market value of this property for the property right. It results from table 4 that the purchase of the property right is especially attractive in case of a land property for charity purposes. In the first year of usufruct the purchase of the property right would cost as little as 3%. In turn, in the same year the purchase of property rights to a land property for commercial purposes is as much as 30%.

## Conclusion

As it results from the considerations presented above, the analysed problem connected with the selection of the moment when the perpetual usufructuary applies for the purchase of the property right is multifaceted. For a more comprehensive presentation of the problem it is necessary to give two supplementary remarks. The presently binding Act on the transformation of the perpetual usufruct right into the property right to a real estate (Dz. U. RP 175, item 1459) reduces the time it remains in force, stressing that authorized individuals may demand the transformation of the perpetual usufruct right into the property right up to December 31, 2012. Thus, it is possible to select the date of applying, while the selection needs to satisfy the following circumstances.

When the perpetual usufructuary applies at an earlier date it results in a situation when:

- the perpetual usufruct right has a bigger value in relation to the value of the property right, i.e. the perpetual usufructuary will incur a lower cost of purchasing the property right,
- the fee for perpetual usufruct will no longer be required.

Purchasing the property right by the perpetual usufructuary at a later date is characterized by the opposite trend. However, there is one circumstance which would suggest a possible selection of a later transformation of the perpetual usufruct right. This is connected with the situation when the perpetual usufructuary uses the real estate in their economic activity – then all costs connected with the functioning of the perpetual usufruct right constitute the operating costs of the company. For this reason prices for real estates in possession of perpetual usufructuaries and used for economic activity are similar to prices for real estates similar to those to which entrepreneurs have the property right.

The article analysed estimated fees for the transformation of the perpetual usufruct right into the property right based on an empirical formula given in the legal act – the Ordinance of the Council of Ministers on the pricing of real estates and the preparation of estimate statements. A total of 492 all possible cases were investigated, where this formula may be applied in case when a real estate was put out to perpetual usufruct for the period of 40 years, i.e. depending on the value of the capitalization rate, the percentage rate of the annual fee and the number of remaining years of the unused usufruct period. The level of fees for the transformation of the perpetual usufruct right into the property right increases with a decrease in the number of years of the unused usufruct period, whereas an increase in the interest rate for the annual fee results in an increase of the fee for the transformation of the perpetual usufruct right into the property right. In turn, an increase in the capitalization rate results in a reduction of the fee.

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## OCENA OPŁACALNOŚCI PRZEKSZTAŁCENIA PRAWA UŻYTKOWANIA WIECZYSTEGO W PRAWO WŁASNOŚCI NIERUCHOMOŚCI

### S t r e s z c z e n i e

W artykule poddano analizie ocenę opłacalności przekształcenia prawa użytkowania wieczystego w prawo własności, w różnych momentach trwania tego prawa, w oparciu o wzór empiryczny podany w akcie prawnym – Rozporządzeniu Rady Ministrów w sprawie wyceny nieruchomości i sporządzenia operatu szacunkowego. Zbadano, jak opłata za przekształcenie prawa użytkowania wieczystego w prawo własności kształtuje się w zależności od przyjętej stopy kapitalizacji, stawki procentowej opłaty rocznej, liczby lat niewykorzystanego okresu użytkowania. W pracy rozpatrzono 492 przypadki, kiedy ten wzór ma zastosowanie. Opłata za przekształcenie prawa użytkowania wieczystego zmniejsza się wraz ze zwiększeniem się stopy kapitalizacji, a zwiększa się wraz ze zmniejszeniem się niewykorzystanego okresu użytkowania wieczystego. Z kolei wzrost stawki procentowej opłaty rocznej za użytkowanie wieczyste wpływa na zwiększenie się opłaty za wykup prawa własności. W pracy rozpatrzono ekonomiczne korzyści i straty, które ponosi użytkownik wieczysty czy właściciel nieruchomości, którym jest Skarb Państwa bądź jednostka samorządu terytorialnego, z tytułu przekształcenia prawa użytkowania wieczystego w prawo własności.