

## **On repossession of areas**

If a building is in such a state of dilapidation that it poses a risk to others, it may be demolished, pursuant to sections 10 and 17 of the Building Act.

However, a problem arises when a building is not in use and does not pose any risk to others.

One way of repossessing an area is by applying section 37 of the Planning Act and the principle of shared ownership:

According to the Greenlandic Planning Act, section 37, sub-section 1, which states that “no area may be withheld from general use or be used without permission from the land authority”, it may be argued that once an area is not used for the purpose that was stated in the application, it is withheld from general use, and, based on the joint ownership in force in Greenland, the area is to return to the community so that others may benefit from the area.

The challenge lies in documenting that a certain area is no longer used for the purpose that was stated in the area allotment or planning basis. For instance, it is difficult to prove that a recreational hut has not been in use for a longer period of time. Fortunately, it is possible to provide documentation in certain cases.

For instance, in case a person has been granted an area allotment in a residential area, in which the person has a house, but there are no doors in the house, the house cannot be used as a residence. Or in case a person has been granted an area allotment in an industrial area, and the municipality documents that no CBR number has been established for the area, or that no funds have entered or left the company – i.e. no commodities or raw materials have been purchased, and no goods or services have been sold, depending on the type of company – the area is not in use, and the municipality may annul the area allotment and repossess the area, pursuant to the principle in the Planning Act, section 37, sub-section 1, stating that no area may be withheld from general use, and the principle of Greenlandic shared ownership.

The period during which an area is to be unused in order for repossession to commence is not defined. However, in practice, a period of at least two years is generally applied. Also, concrete documentation is to be provided, substantiating your suspicion that the area is not being used. It is not enough to demonstrate that the business is experiencing stagnation; that the person has been sick or away; or other facts for which a natural explanation can be given.

Naturally, the holder of the rights to the area is to be given notice before the municipality takes any steps. This allows the rights holder to rectify matters; commence a real company; render the house habitable; or attempt to sell the buildings on the area.

Repossession of the area may be accompanied by a requirement that the area be returned in its original state (terms stipulated in the area allotment, cf. section 46, sub-section 2, item 6), which means that the owner is obligated to clear the area. Such requirement is to be accompanied by a deadline for completion of clearing, and a definition of the scope of clearing.

In case a building represents significant value that the owner cannot take with him/her, it may be difficult to effect repossession instead of expropriation. In practice, this may pose limited problems. It is presumed that if an owner has tied up significant value in a building, the owner is interested in either using it or selling it, and, at least, maintaining it. Consequently, repossession is normally only an option when objective

criteria indicate that the area is not in use. And that, in turn, often means that no significant values are tied up in buildings or other facilities on the area.

As mentioned above, the reasoning is that areas that are not in use are considered as withheld from general use and in violation of the principle of Greenlandic shared ownership. Consequently, the municipality may annul the area allotment and repossess the area.

Further argumentation for repossession is available in “Vejledning i arealanvendelse og planlægning 2. del, Grønlands Hjemmestyre, oktober 1996 kapital VI, Tilbagetagelse af arealtildelingen” (in English: Guideline on area use and planning, part 2, Greenland Home Rule, October 1996, chapter VI, Repossession of allotted areas), which includes guidelines on how to understand and apply the Planning Act. However, this practice is yet to be tried by the courts of law and may therefore be overruled by the district court if a citizen chooses to have a repossession decision tried in court.