

August 2018

In focus: Law on the Registration Procedure with the Cadaster of Real Estate and Utilities

On 25 May 2018, the Serbian Parliament adopted the Law on the Registration Procedure with the Cadaster of Real Estate and Utilities which entered into force on 8 June 2018. The relevant bylaws for implementing the Law shall be rendered within 3 months from the date of the Law's entry into force.

Prior to this Law, the procedure of registration with the Cadaster was regulated by the Law on State Survey and Cadaster ("Official Gazette of the Republic of Serbia", no. 72/2009, 18/2010, 65/2013, 15/2015 - decision CC, 96/2015, 47/2017 - authentic interpretation, 113/2017 - another law, 27/2018 – another law and 41/2018 – another law - hereinafter: „LSSC”), the provisions of which, regarding the procedure of registration, were abolished.

I Aim of the Law and the principle of officiality

The Law states that its aim is to establish and maintain an accurate and wholesome record of real estate in order to ensure secure legal transactions, which is achieved by an up-to-date registration of stark and accurate data on real estate and rights with the Cadaster. In accordance with this

intention, a more simple procedure is established, as well as short deadlines for state authorities.

One of the most significant novelties is that Article 3 of the Law introduces the principle of officiality, as one of the principles of record keeping, which implies that the procedure of registration with the cadaster is initiated ex officio, but does not exclude the possibility for a client to initiate the procedure.

Regarding the aim of simplifying the procedure of registration of rights and real estate with the cadaster for citizens, the Law stipulates that documentation on legal transactions regarding real estate will be delivered to the cadaster directly. Withstanding this provision, it is prescribed who are the submitters of this documentation, i.e. which bodies are obliged to ex officio deliver to the Real Estate Cadaster Office (hereinafter: RECO), via an e-service, documents they issue, certify or verify, and those are:

1. Courts, which are obliged to start with submission of documentation starting from 01 January 2020;
2. Public notaries, who are obliged to start with submission of

documentation starting from 01 July 2018;

3. Bailiffs, as well as other bodies of administration and organizations with public authorization, which are obliged to start with submission of documentation starting from 01 November 2018.

The procedure of registration with the cadaster is initiated by RECO, as soon as documents from a submitter are received.

II RECO's connection with tax authorities

Apart from initiating the procedure, RECO is also obliged to deliver tax applications, if they were delivered to it with the documentation by a submitter, which is always the case if the submitter in charge was public notary, as that is also their obligation, regarding tax application for tax on transfer of absolute rights, inheritance and gift tax, as well as property tax, as prescribed by the Law. These obligatory tasks for RECO also stand when the documentation was submitted by some other submitter, as well as when the procedure is initiated by a client, which is when RECO forwards, via e-service, the documentation to competent tax authority and to a local self-government unit.

III Modernization of the procedure – e-service

Moreover, one of the most important innovations of the Law is the rule that states that all applications and documentation must be submitted via e-service, in a digital form. Immediately after receiving the documentation, RECO issues

an electronic confirmation to the submitter or client.

The Law leaves a possibility to submit requests in hard copy until 31 December 2020. Appeal and other legal remedies can be submitted in this form even after this date.

Also, every real estate in the territory of the Republic of Serbia will have a unique identification number, which represent a unique mark of identification on that real estate, and the way of determining a unique identification number will be regulated by a bylaw.

IV Rendering decisions – higher degree of responsibility for submitters

After ex officio initiation, as well as based on a client's request, RECO checks if the formal conditions for registration with the cadaster are met.

RECO does not have a right, or an obligation to check if the change that is being made by documentation issued, certified or verified by a submitter is in accordance with statutory provisions, as they were obliged to do so in the procedures they were competent for. RECO only issues a decision by which a registration with the cadaster is made.

If RECO expresses a doubt that a legal transaction clearly violates regulations, it will register a change in the cadaster based on that documentation and will immediately inform an authority that is competent to initiate a procedure for

annulment. A notation on this is made in the register.

V New provisions regarding facilities under construction and joint tenancy of spouses

The Law, within intention of maintaining legal certainty, for the first time regulates pre-notation of facilities under construction and separate parts of facilities under construction, which is made on the basis of a final building permit and accompanying technical documentation, as well as on the basis of a transaction agreement of facilities or separate parts of facilities.

By registering a facility or separate parts of a facility with the cadaster on the basis of a final use permit, abovementioned pre-notations are transformed to ownership right, if all other statutory conditions for ownership are met.

Regarding joint tenancy of spouses, i.e. tenancy acquired during matrimony, it is registered as joint ex officio. This can be avoided by submitting statements of both spouses that the property in case is separate. Real estate that is already registered as a separate property of one of the spouses can be switched to the joint tenancy regime by submitting statements of spouses that the property is in fact joint tenancy.

VI Deadlines for rendering decisions for registration and form of delivery of decisions

In the procedures initiated ex officio, RECO has a term of 5 working days to render a decision.

When the procedure is initiated by a client's request, a decision has to be rendered within 15 days, except for registration of mortgage, notation on mortgage sale, and other simple administration cases (which will be closely defined by a bylaw), when RECO must act within 5 working days from receiving a request.

Decisions rendered ex officio are delivered to individuals and legal entities which are affected by registration via registered post, as a hard copy of a digital document, verified in accordance with statutory provisions on e-commerce.

Decisions issued on a client's request, are delivered to the client in the form of a digital document, via e-service, and to other individuals and legal entities affected by registration by a registered mail, verified in accordance with statutory provisions on e-commerce.

VII Finalization of ongoing procedures and procedures based on older documentation

Transitional and final provisions of the Law stipulate that procedures initiated before the Law entered into force, will be finished by provisions of LSSC. The same stands for procedures initiated on client's request submitted from 08 June 2018, for registration based on decisions of courts and other competent bodies issued before this date, as well as private documents which are not certified by public notaries.

These procedures must be completed until 31 December 2020. On the contrary, the Law will be applied to initiation requests filed from 08 June 2018 for registration based on decisions issued after this date as well as on documentation issued or certified by public notaries or courts, after the Law on Notary Public ("Official Gazette of the Republic of Serbia" no. 31/11) entered into force.

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