CVETKOVIĆ, SKOKO & JOVIČIĆ
JOINT LAW OFFICE

Knez Mihailova Street 7/IV • 11000 Belgrade • Serbia • Phone/fax (+381) 11 3281-949 • 3281-890 • 3283-764 • www.cplaw.rs • e-mail: office@cplaw.rs

March 2019

In focus: Law on Amendments and Supplements to the Law on Planning and Construction

The National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Law on Planning and Construction ("Official Gazette of RS", no. 83/18, hereinafter: the "**Law**") which entered into force on November 6th, 2018.

The main reason for adoption of the Law is to introduce new legal solutions, as well as to improve and change existing ones. Having in mind that the last amendments to Law on Planning and Construction were in 2014, the provisions of this Law are harmonized with the provisions of special laws that came into force after 2014, especially the Law on Electronic Commerce and the Law on General Administrative Procedure.

The Law has made numerous changes, of which the most important are:

I. Amendments in terms of the unified procedure

1) Exchange of documents and submissions in the unified procedure

As an exception to the rule, it is envisaged that the exchange of documents and submissions in procedures of issuing acts for exercising the right to construction and use of facilities (hereinafter: the "**unified procedure**") shall not be performed electronically for documents and submissions containing classified information that are marked with a degree of confidentiality in accordance with the regulations governing the confidentiality of data. Also, a third party seeking to be recognized as a party in the unified procedure is not obliged to use electronic documents or address the competent authority electronically.

The Law prescribes that a document, previously originally made in paper form, shall be digitalized and notarized in accordance with the law regulating electronic commerce. In addition to the persons referred in the Law on Electronic Commerce, digitalization of a document can be performed by a responsible project designer and lawyer admitted to the bar association, if he/she simultaneously signs a submission in the unified procedure to which the subject act is attached, as well as persons registered for the use of electronic administration services through the E-Government portal.

2) Penalty for the responsible person in the holder of public authority

In case the holder of public authority in unified procedure fails to act in the manner and within the terms stipulated by the Law, a fine is imposed for the responsible person in the holder of public authority in the range of RSD 10,000-50,000.

II. Amendments in terms of planning documents

1) Central Register of Planning Documents

The Law establishes the Central Register of Planning Documents which records all planning documents and is run by the Republic Geodetic Authority. All planning documents recorded in this register are also published in electronic form, thus being available to all interested parties on the Internet, free of charge.

2) Temporal validity of planning documents

Temporal validity of planning documents is limited, so it is stipulated that the **planning documents are valid for a maximum period of 25 years. Valid planning documents issued before January 1st, 1993 cease to have effect after the expiration of 12 months from the day the Law enters into force, and the authorities responsible for their adoption are obliged to issue a new planning document within that term**.

3) General Regulation Plan

The Law stipulates that the General Regulation Plan is a **basic regulation plan which shall be directly implemented using the regulation and construction rules throughout the scope of the planning document**.

4) Procedure in the preparation and monitoring of the drafting of planning documents

In order to make the procedure more efficient, the Law introduces the general provisions related to the procedure in the preparation and monitoring of the drafting of planning documents. Starting from the date of commencement of application of this Law, the exchange of documents and submissions in these proceedings will be executed electronically, except for documents and submissions for which a degree of confidentiality is determined in accordance with the regulations governing the confidentiality of data.

In addition, the Law stipulates that the competent authority, a special organization, or a holder of public authority, **is obliged to act upon the request of the holder of drafting the planning document for the issuance of special conditions for planning and landscaping, within 15 days from the date of receipt of the request**. Exceptionally, the request can also be processed within 30 days from the date of its receipt, with an explanation for failure to act within the specified term.

If the competent authority, a special organization, or the holder of public authority does not act within the above referred terms, **it shall be deemed that there are no special conditions for planning and landscaping**.

5) Simplified procedure for amending and supplementing planning documents

The Law stipulates that amendments to the planning documents shall be carried out in a simplified procedure in the following situations:

- in case of minor amendments and supplements to the planning document;
- in case of amendments and supplements to the planning document in order to harmonize it with the plan of higher order, when only a textual change of the plan is made;

• in case of amendments and supplements to the planning document for the purpose of constructing infrastructure facilities or structures for public purposes, when construction is not possible without amending the planning document.

The simplified procedure **excludes the process of early public review. Instead, the draft is prepared directly, public review is organized lasting at least 15 days, and the subject of the amendments is only part of the planning document being amended, and not the entire planning document**.

III. Amendments in terms of location conditions

The Law specifies cases i.e. works for which the investor is not obliged to obtain location conditions.

In addition, the validity of location conditions has been extended to **2 years from the date of issuance**, instead of the previous 12 months. In case of phase construction, i.e. in case of issuance of building permits in phases, location conditions are valid until the expiration of validity of the construction permit for the final phase.

Additionally, the Law now explicitly defines that conditions submitted by holders of public authority shall not be contrary to the conditions in the planning document on the basis of which location conditions were issued, nor shall they change the urbanistic parameters. **If the holder of public authority issues acts contrary to these obligations, the competent authority shall issue location conditions exclusively in accordance with urban and other parameters from the applicable planning document**.

If, after the issuance of location conditions, some of the holders of public authorities change the conditions that are an integral part of the issued location conditions, they will be responsible for the damage incurred to the investor due to activities taken on the basis of the originally issued location conditions.

IV. Changes in respect to the building permit

1) Special building permit for preparatory works

As an exception to the rule under which preparatory works are carried out only on the basis of a building permit that relates to the entire facility, the Law prescribes that preparatory works for buildings for which the ministry competent for construction issues a building permit (facilities referred to in Article 133 of the Law on Planning and Construction) and structures with a gross developed building area of over 800m2, can be performed on the basis of a special building permit.

2) The geodetic survey of the facility

The Law stipulates that, in addition to the existing obligation of delivering the geodetic survey of the constructed foundation with the statement on completion of the foundation, the contractor now has the obligation to submit

the geodetic survey of the facility with the statement on completion of the facility.

3) Validity period of the building permit

The Law has changed the period of validity of the building permit, so the permit ceases to be valid if the notification of works is not submitted within **3 years from the date when the decision on the building permit became final and binding**. Regarding the degree of completion of the facility, which is important for the extension of the validity of the building permit, the limit of over 80% of completion is no longer prescribed, **but that the building is completed in the functional sense**.

For those facilities for which the decision on the building permit or the decision on the approval of construction was issued in accordance with the law before September 11th, 2009, **the usage permit must be obtained in a period of 2 years from the date of entry into force of the Law**. If this term is not met, the competent authority shall issue the decision on termination of the building permit, while property tax shall be payable until the issuance of the decision on demolition of the building or until the issuance of the new building permit, in the amount of the tax that would be paid for the entire facility.

4) Change of investor

In case of change of the investor after the decision on the construction permit became final and binding, the deadline for submitting the request for modification of the decision on the building permit has been extended from 15 to **30 days** from the date of the change. In addition, the request for modification of the building permit due to change of the investor can be submitted until submission of the application for the usage permit.

The law stipulates that in case the investor, as a legal entity, fails to act within the aforementioned deadline, such omission represents an economic offense for which a fine is stipulated in the range of **1,500,000.00 dinars to 3,000,000.00 dinars**, and for the responsible person in a legal entity a fine ranging from 100,000.00 to 200,000.00 dinars.

5) Special types of structures/works

The Law no longer prescribes special types of structures/works for which an act of the competent authority is not necessary, as well as specific types of structures/works where construction/execution is performed on the basis of the decision on approval. These are now the subject of the Rulebook on a special types of facilities and special type of works for which it is not necessary to obtain an act of the competent authority, as well as the types of facilities being constructed or the types of works performed, on the basis of the decision on the approval for the execution of works, as well as the scope and content and control of the technical documentation attached to the request and procedure carried out by the competent authority (”Official Gazette of RS”, no. 2/2019).

V. Changes in terms of licensing

1) Personal licenses

The Law stipulates that, instead of the Serbian Chamber of Engineers, the license for the responsible planner, responsible urban planner, responsible project designer and responsible contractor shall be issued by the ministry responsible for

construction, spatial planning and urban development.

2) Licenses for the drafting of technical documentation

The Law also prescribes certain changes regarding licenses for the drafting of technical documentation issued to legal entities, entrepreneurs and foreign citizens. Instead of the Serbian Chamber of Engineers, the ministry responsible for construction, spatial planning and urban development examines if the conditions for the development of technical documentation by a foreign citizen are met.

3) Licenses for construction of buildings and execution of works

Unlike the previous legal solution, by which legal entities and entrepreneurs (contractors) were obliged to fulfil the conditions only for the construction of buildings and the execution of works for which the ministry of construction issues building permits, the Law prescribes conditions for each type of facility, i.e. for each type of works, as well as the appropriate registers where the contractors shall be registered, depending on the type of facilities being built, i.e. the types of works being carried out. **The deadline for legal entities and entrepreneurs (contractors) to comply with these obligations is one year from the day the Law enters into force**.

VI. Changes in terms of allotment and re-allotment projects

The Law introduces a novelty in the procedure of re-allotment – in the case when part of the cadastral lot in public ownership is to be connected to the neighboring cadastral lot in order to form a building lot – a separate cadastral lot shall be formed in the re-allotment procedure, which can be alienated in accordance with the provisions of a special law.

The deadline for appealing the decision of the competent authority for state survey and cadaster on the formation of a cadastral lot is shortened from 15 to 8 days.

VII. Designating land for the regular use of facilities in special cases

The law regulates the procedure for designating land for the regular use of facilities built in an open residential block and residential compound, as well as for facilities in the process of legalization.

The land for the regular use of facilities built in an open residential block and residential compound consists **only of the area of land under the facility, which the competent authority determines on the basis of the copy of the cadastral plan containing the drawing of the base of the existing building**. This legal solution excludes the possibility of treating the owners of separate parts of the structure built in an open residential block or in residential compound as co-investors, so in the case of phase construction, they are not parties to the procedure for issuing or modifying building permits, nor are they parties to the procedure before the competent authority for the affairs of state survey and cadaster.

Additionally, not considered as co-investors are owners of special parts of buildings that were built in any of the prescribed phases of construction and who, on that basis, registered the right of co-ownership on the land foreseen for the realization of all phases by the date of entry of the Law into force.

Regarding the procedure for designating land for the regular use of a structure which is the subject of legalization, the Law stipulates, inter alia, that the owner of an illegal structure has the obligation to form a cadastral lot before the decision on legalization of the facility is issued.

VIII. Alienation of construction land in public ownership

The law introduces new grounds for the alienation of construction land in public ownership by direct settlement, as follows:

- the exchange of construction land in case of replacement of a family housing facility located on unstable terrain with an active geodynamic process that causes soil movements;
- alienation of construction land to another co-owner on the basis of pre-emptive right.

IX. Termination of the right of use on construction land

The Law establishes the possibility, i.e. the right to submit a request for issuance of the decision that will determine termination of the right of use on construction land, for a person with the registered right of use on construction land who is the payer of the fee for conversion of the right of use to ownership right on construction land.

On the other hand, in case that a legal entity (holder of the right of use on construction land) ceases to exist, the competent public attorney office (and when the right is registered in favor of the Republic of Serbia – the State Attorney's Office or the Republic Property Agency) submits to the competent authority a request for the decision on termination of the right of use of construction land.

The decision on termination of the right of use shall be rendered in the procedure led by the unit of local self-government responsible for property and legal affairs and it represents the basis for termination of the right of use, while the public property right remains registered with no changes.