

July 2015

In focus: The Law on Amendments and Supplements to the Mortgage Law

On July 7th 2015, the National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Mortgage Law which entered into force on July 16th 2015 (hereinafter: the “**Amendments to the Law**”).

The Amendments to the Law are aimed at improving the position of creditors, taking into account protection of the interests of debtors and reaffirmation of the extrajudicial settlement procedure, with the aim of increasing legal and economic security of all participants in the proceedings, i.e. acceleration of overall economic activity in the country. The Amendments to the Law specify the provisions that have caused doubt and created the possibility for different interpretations, harmonize the provisions of the Mortgage Law with the Law on Public Notaries, the Law on State Survey and Cadaster, and the Law on Execution and Security, and delete the provisions relating to the Central Mortgage Register, which were never implemented in practice.

Among the most significant novelties adopted by the Amendments to the Law we emphasize the following:

1. Mortgage Agreement / Mortgage Statement

According to the Amendments to the Law, the mortgage agreement, i.e. mortgage statement no longer has to contain the explicit statement of a third party who has direct possession and is not the owner of the mortgaged real-estate (the tenant, etc.) that he is aware of the consequences which may arise from the mortgage agreement, including eviction from the real-estate and losing possession on it, nor his compliance with the right to accessing the real-estate, including entry into the real-estate by the creditor. Stipulated is the obligation of the stated party to cooperate with the creditor in the sale, provided that the right to access the real-estate cannot be exercised in the period from 10 p.m. to 7 a.m., as well as on public holidays as provided by the law.

2. *The rights and obligations of the creditor and transfer of the same*

It is determined that the creditor may request from the debtor supplementary security of a similar level of security provided only if a reduction in the value of the mortgage real-estate has already occurred, and not because of the risk of reduction.

The Amendments to the Law provide for the possibility that the creditor or several of them, in writing with certified signatures, designate a third party or one of them to undertake legal actions for the protection

and settlement of claims secured by the mortgage, in which case the name of the third party is entered into the real-estate register. The third party acts in the name and for the account of the creditor, or several of them, however the creditor or several of them may always request to be registered in the real-estate register, i.e. to substitute the third party.

In accordance with the Amendments to the Law, a subsequent agreement can be concluded only when one creditor is registered on the mortgaged real-estate.

3. Extrajudicial settlement procedure

The request for annotation of foreclosure may be filed by every creditor, regardless of precedence. If, prior to filing the annotation of foreclosure, the real-estate register received several requests for the registration of rights on the same real-estate, it shall decide on all applications in order of receipt within seven days from receipt of the request for annotation.

The Amendments to the Law specify that, if the real-estate is sold by direct sale until the moment of advertising the sale by auction, the price cannot be lower than 90% of the appraised value. In case the real-estate remains unsold at the first public auction, the creditor can continue selling it through direct sale, but at a price not lower than 60% of the appraised value, or schedule a second sale by auction which must be held not later than 120 days from the date of conclusion of the unsuccessful auction.

The deadline for finalization of the sale of mortgaged real-estate in an extrajudicial settlement procedure is limited to 18

months from the day when the decision on annotation of foreclosure became final. If the real-estate remains unsold in the stated period, the real-estate register shall issue a decision on deleting the annotation ex officio and shall, at the same time, register an annotation prohibiting extrajudicial sale of the mortgaged real-estate by the creditor on whose behalf the annotation of foreclosure was registered.

Also determined is the obligation of the creditor to hold the first sale by auction within six months from the day when the decision on annotation of foreclosure became final.

4. Order of settlement

The order of settlement of claims of creditors who have a lien on the same subject of mortgage out of the price derived from the sale of mortgaged real-estate is no longer determined according to the moment of mortgage registration, but according to the day, hour and minute of receipt of the request for registration of mortgage.

In accordance with the Amendments to the Law, the creditor who conducts the sale of real estate is obliged to enter into the agreement on its sales, in addition to the purchase price, a provision, i.e. draw up a special supplement to the agreement which determines the distribution of funds received from the sale, according to the legal order.

The agreement must also contain instructions regarding the method of payment of the purchase price into a trust or other eligible account (escrow account,

dedicated account, notary public account, etc.) which is not subject to enforced collection and out of which settlements shall be conducted according to the established distribution. In this regard, the creditor shall submit to all parties who have rights on the real-estate, as well as to the bank where the account is held, within seven days from the day of concluding the agreement on sale, a copy of the agreement based on which the funds are withdrawn from the account without the subsequent consent of other parties included in the distribution and without submitting additional documents.

The costs of opening and maintaining the accounts shall be borne by parties to whom the funds are distributed, in proportion to the amounts provided for by the distribution in relation to the total purchase price.

5. Termination and deregistration of mortgage

When there are more mortgage creditors, if only part of them are settled out of the value of the real-estate sold through extrajudicial sale, the competent real-estate register is obliged to, on the basis of requests and documents required by the law, perform the deregistration of all registered mortgages on the subject real-estate.

When a mortgage is terminated because the mortgaged real-estate was sold in an extrajudicial manner, or the creditor has been settled on the basis of an agreement on sale through direct sale or on the basis of a subsequent agreement, the

deregistration is carried out at the request of the creditor, debtor or owner of the real-estate. All registered mortgages and other encumbrances (entered in the register after the mortgage for whose settlement the sale has been executed, i.e. a subsequent agreement has been concluded) cease by force of law, and deletion is done ex officio, regardless of whether the claim has been settled in total, in part or has remained unsettled.

6. Transitional and final provisions

The deadline of 18 months for deleting the annotation of foreclosure ex officio by the real-estate register if the real-estate remains unsold within the prescribed time, for decisions on annotation of foreclosure which have become final before entry into force of the Amendments to the Law, starts from the date of entry into force of the Amendments to the Law.

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