

December 2015

In focus: Law on Amendments and Supplements to the Law on State Survey and Cadaster

On November 20th 2015, the National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Law on State Survey and Cadaster which entered into force on December 4th 2015 (hereinafter: the “**Amendments to the Law**”), provided that provisions relating to the authority of the Republic Geodetic Authority to decide in the second instance shall apply from the ninetieth day of entry into force of the Amendments to the Law, and provisions concerning the minor offense liability of state officials in case of failure to act on a submitted request for registration within the prescribed time shall be applicable after expiry of six months from the date of entry into force of the Amendments to the Law.

One of the reasons for the adoption of the Amendments to the Law is the need for acceleration of the procedure of registration of real-estate and rights on them in the real-estate cadaster. In this regard, a request for registration has to be decided on in a term of 15 working days from the date of receipt of the request, i.e. 7 working days in case of registration of a building and separate part of a building for which the usage permit was issued in the unified procedure, registration of a mortgage, annotation of mortgage sale, annotation of a decision on execution, as well as simpler administrative matters. If the request is not decided on within the

prescribed period, the civil servant in charge of the department and the responsible civil servant within the internal unit of the department competent for resolving the case, shall be fined in the amount of 10,000 to 50,000 dinars, and for repeated minor offenses, the offender will be imposed a fine of 100,000 to 150,000 dinars.

On the other hand, if the request is not submitted in the proper manner, the competent department is not obliged to notify the party of any deficiencies with respect to the submitted request and attached documents, but shall render a decision dismissing the request, unless the request relates to the registration of real-estate, when the applicant is requested to correct the deficiencies within 8 days and in case proof of tax payment was not submitted with the request, when a notice is sent demanding payment of the tax within 8 days.

A party may, only once during the procedure, extend, modify or specify its request if it is grounded on the same legal basis, in which case the deadline for deciding on the request begins to run from the date of the extension, modification or specification of the request.

The Amendments to the Law provide for the possibility of submitting the request in paper or electronic form, as well as for a party to opt in the request for the manner of delivery of the decision on the submitted request: by registered mail to the requested

address, in the premises of the department or via the internet application, in accordance with special regulations governing electronic office operations in the public administration bodies. If the decision is returned with a note from the courier that the recipient is unknown at the address, i.e. that he has moved or failed to take over the decision within the given deadline, the decision is delivered by public announcement on the notice board of the competent department and website of the Republic Geodetic Authority (hereinafter: the Authority) and is deemed to be served by expiration of the term of 8 days from the date of posting on the notice board and website of the Authority.

According to the Amendments to the Law, electronic office operations of the Authority regarding requests, decisions, documents and other acts should be set up by no later than March 1st 2016, except for implementation of the unified procedure in electronic form in accordance with the Law on Planning and Construction, whose implementation begins on January 1st 2016. Until establishing electronic office operations and appropriate internet applications, submission of requests and decisions shall be made in paper form.

By the Amendments to the Law, the Authority is once again competent for deciding in the second instance in procedures of establishment, renewal and maintenance of the real-estate cadaster, i.e. the utilities cadastre. According to previous legislation, this was in the competence of the ministry in charge of construction and urban planning.

The deadline for appeal has been shortened from 15 to 8 days from the date of receipt of the decision rendered in the first instance, and a conclusion can be appealed as well. The appeal is submitted to the Authority through the competent department, however if the department finds that the appeal is founded, it is obliged to adopt the appeal and substitute the decision within 7 working days, while otherwise, it is obliged to submit the appeal with case documents to the Authority within the same period.

By the Amendments to the Law, compliance with other laws such as the Law on Public Property, Law on Public Notaries, Civil Servants Law and Law on Higher Education has been performed. Compliance has also been conducted with the provisions of the Law on Planning and Construction which prescribe that the registration of newly built buildings in the real-estate cadaster is done in the unified procedure. In addition, in order to create a legal basis for processing of personal data, harmonization has been performed with the Law on Protection of Personal Data, thus it is strictly stipulated which personal data is entered into the database of the real-estate cadaster, the records of submitted applications run by the Authority, i.e. which personal data is included in the real-estate sheet, application for registration in the real-estate cadaster, and the decision on registration or refusal and dismissal of the application for registration.

Also, certain provisions have been specified in order to eliminate ambiguities caused in practice, as well as the improvement of existing solutions and introduction of new ones, all of which should further contribute to the acceleration and efficiency of the

procedure of registration in the real-estate cadaster.

In accordance with the abovementioned, provisions relating to advance registration and annotation have been amended, therefore the term for advance registration has been shortened from 90 to 30 days, new types of annotations are stipulated and it is expressly provided that registration of an annotation does not preclude further registration on the real-estate to which the annotation applies, but that all disposals and registrations which are contrary to the purpose of the registered annotation and are dependent on the outcome of solving real-estate rights on the real-estate for which the annotation is registered depend on the registered annotation.

According to the Amendments to the Law, in order to be eligible for registration, a public document must be final and binding, i.e. enforceable.

In case the statement on permitting full registration is not contained in the transaction document created prior to entry into force of the real-estate cadaster, registration shall be performed if it is determined that there are no other obstacles for registration.

The Amendments to the Law envisage that, when conditions for the registration of ownership rights on a building or separate part of a building are not fulfilled, registration of the holder shall be allowed by providing proof that he acted in the capacity of builder, prescribing evidences which prove the capacity of builder.

By the Amendments to the Law, the priority order of rights is regulated in a different manner, thus the same shall be made in the chronological order of receiving requests and not from the time of submitting requests as was previously stipulated. The time of receipt is determined according to the time of receipt of the written request in the admissions office, regardless of when and how the request was sent. Exceptions to which the prescribed sequence does not apply are also envisaged.

The Amendments to the Law expressly provide that registration in the real-estate cadaster shall become effective from the moment of receipt of the request, and the deadline for correction of errors, deficiencies and omissions on registered real-estate rights on real-estate is extended from 5 to 10 years from the date of registration, i.e. from the date of application of the real-estate cadaster.

A real-estate sheet shall be issued to any interested person, within five working days from receipt of the request, at the premises of the Authority, by post or by e-mail or in another electronic manner, in accordance with the request of the party.

A person who legally acquired the ownership right on construction land without compensation based on the conversion of the right of use into ownership right is exempted from payment of the tax.

Also, if the request is denied or dismissed or the procedure is suspended, and the party within 60 days of receipt of the decision on

the first request submits a new request, it shall not be bound to pay the tax.

Transitional and final provisions stipulate that first instance procedures which are pending before entry into force of the Amendments to the Law shall be finalized in accordance with the provisions of the amended law.

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