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GENERAL REAL ESTATE GUIDE: SERBIA

This RSM real estate guide ("**Serbia Guide**") provides brief legal analysis of main topics and regulations governing real estate rights in the Republic of Serbia. Serbia Guide has been prepared in cooperation with Stojković Attorneys, Belgrade (www.statt.rs). Purpose of the Serbia Guide is to provide an overview of relevant real estate institutes existing in local jurisdiction. **Serbia Guide is intended mainly for foreign entities** interested in learning more about the area of property rights and real estate rights with tax implications in particular. However, the Serbia Guide is also useful for Serbian nationals looking for answers on multiple real estate issues that are usually scattered in numerous laws and regulations.

The Serbia Guide is structured in following subsections, each covering specific real estate matter:

- Types of real estate rights;
- Acquisition of real estate rights;
- The right of foreigners to acquire real estate;
- System of registration – Real Estate Cadaster;
- Protection of transferred ownership rights;
- Lease agreements;
- Mortgage;
- Restitution and compensation;
- Taxation;
- Legal framework.

Types of real estate rights

- ownership right (individual ownership, co-ownership and joint ownership);
- servitude right (real and personal);
- pre-emption right (statutory and contractual);
- mortgage;
- right of use;
- lease.

Acquisition of real estate rights

Individual ownership

Real estate rights in the Republic of Serbia are acquired based on a valid legal basis (sale and purchase agreement, inheritance decision, gift agreement etc.) by way of inscription into the Real Estate Cadaster.

Real estate transactions are thoroughly regulated by Serbian legislation. In order to transfer real estate ownership rights, it is necessary to have a suitable agreement that must be concluded in written (paper) form, with or without agreed compensation, and bearing the contractual parties signatures. The agreement must be certified by the notary public (*forma ad solemnitatem),* otherwise, the agreement will be void.

It should be noted here that the purchase price of real estate can be expressed in euros, which is an exception to the rule that in the Republic of Serbia payments, collection and transfer are made in dinars. Also, cash operations are limited and a person selling goods or services in the Republic of Serbia may not receive cash for payment in in the amount of EUR 10,000 or more in dinar equivalent. The restriction also applies if the payment for goods and services is made in several interconnected cash transactions in the total amount of EUR 10,000 or more in dinar equivalent. Therefore, assuming that the price of the property is higher than EUR 10,000, the seller can receive only up to EUR 10,000, while the remaining amount must be transferred to a commercial bank account.

Current legislation provides two possible forms of certification of agreements on the transfer of property rights: form of public notary deed (e.g. in cases when the real estate is purchased with housing loan funds or when there is a minor or incapacitated person in the transaction) and solemnization form, by which the notary public confirms that the document was read to the parties in his presence, that they stated that the document fully and completely corresponds to their will and that they signed it in their own handwriting. Both forms are appropriate legal basis for transfer of real estate while the significant difference between these is of practical nature since solemnization is charged by the notary public with only 60% of public notary fee opposed to a full fee that is charged by public notary when he personally composes public notary deed.

Before the agreement is certified, the public notary is obliged to check whether the real estate has been issued a final construction and use permit, to check whether the seller has previously concluded a contract with another buyer and to inform the agreement parties on the outcome of the check.

As a rule, the public notary deed is compiled in the Serbian language, in the Cyrillic alphabet, but it can also be compiled in a foreign language, at the request of a party in the agreement, if the public notary has the capacity of a court interpreter for the language in which he draws up the agreement and if the agreement is intended for use abroad. On the other hand, when solemnizing the agreement, the public notary may verify the bilingual contract if the court interpreter confirms the identity of the agreement in a foreign language with the agreement in Serbian.

The public notary who has certified the agreement is obliged to immediately submit a certified copy of the agreement to the court competent to keep special records of the concluded real estate contracts, within 24 hours from the moment of certifying the agreement, to the Real Estate Cadastre, about which he issues a certificate to the agreement parties and to the body responsible for determining and collecting public revenues, within ten days from the day of concluding the contract.

Co-ownership

Co-ownership is when several persons have the right to own real estate when a part of each of them is determined in proportion to the whole (ideal part) in a specific share. If the co-ownership parts are not determined, it is assumed that they are equal. Co-ownership is acquired on the basis of a contract under the same conditions as stated in the previous point of the Guide, by inheritance, division or in another way prescribed by special laws.

The co-owner has the right to keep and use the real estate together with the other co-owners in proportion to his share, without violating the rights of other co-owners. The co-owner may dispose of his share without the consent of the other co-owners, provided that in the case of the sale of the co-ownership share, the other co-owners have the pre-emption right.

Co-owned real estate is jointly managed by the co-owners of the real estate. To undertake regular management activities requires the consent of co-owners whose parts together make up more than half the value of the property, while to undertake activities that exceed the scope of regular management (alienation of the whole thing, change of purpose, lease of the whole thing, mortgage on the whole thing, constitution of servitude right, major repairs, etc.) requires the consent of all co-owners. Management can be entrusted to one of the co-owners or a third party, and if the co-owners cannot reach an agreement on management, this can be decided by the court.

The co-owner always has the right to demand the division of the co-owned real estate. The mentioned right of the co-owner cannot become obsolete and the co-owner cannot give up on it. After the division, other co-owners guarantee to the co-owner to whom the real estate or part of the real estate belonged by division, for legal and physical defects of the real estate within the limits of the value of their co-ownership parts.

Joint ownership

Joint ownership is the ownership of several persons on real estate when their shares are determinable but not predetermined. This will be the case when a married person acquires real estate during the marriage. Then the spouses will have joint ownership on the real estate in question, unless the other spouse confirms in writing within the agreement that he/she agrees that the real estate in question will be in the individual ownership of the other acquirer. The same confirmation by the spouse is required within the agreement in the situation when the real estate is sold as their joint ownership.

In order of determination of the joint ownership share, it is necessary to carry out the procedure of division or conclude a marriage agreement, or in the last resort, it is possible that the division can be carried out through a divorce court decision.

All the above-mentioned rules on the acquisition of the individual property rights apply equally to the acquisition or division of joint ownership by agreement, except in the case when the acquisition of joint property is prescribed by law, such as with common premises of a residential building in the case of apartment purchase.

Pre-emption right

A co-owner of real estate who intends to sell his co-ownership share is obliged to offer it for sale to other co-owners. In the case when there are several co-owners, the co-owner with a larger co-ownership share has the priority in exercising the right of pre-emption, and if these shares are equal, the co-owner of the real estate has the right to decide to whom to sell his share.

On the other hand, the owner of agricultural land who intends to sell that agricultural land is obliged to offer it to the owner of the neighbouring agricultural land. Similar to the case of co-ownership, in the case when there are several owners of neighbouring land whose agricultural land borders on the seller's agricultural land, the owner of the neighbouring land whose agricultural land mostly borders on the seller's land has priority in exercising the right of pre-emption. If there are several owners of neighbouring land whose agricultural land is mostly bordered by the seller's land, and the border lines are equal, the owner of the neighbouring land whose area is the largest has the advantage between them. In exercising the right of pre-emption, the owner of the neighbouring land is in order behind the co-owner of the land that is the subject of the sale.

The owner or the co-owner, is obliged to submit the purchase offer to all holders of the pre-emption right in writing, and the offer must contain information on real estate, price and other conditions of sale.

If the holder of the right of pre-emption, to whom the offer was made, does not declare that he accepts the offer within 15 days from the day of receipt of the offer, the seller may sell the real estate to another person, but not under more favourable conditions. If the holder of the pre-emption right does not accept the offer, and the owner does not sell the real estate within one year from the day of non-acceptance of the offer, he is obliged to resend the offer to all holders of pre-emption rights.

The right of foreigners to acquire real estate

Foreign natural and legal persons who perform activities in the Republic of Serbia may, under the conditions of reciprocity, acquire the right of ownership over real estate that is necessary in order to perform such activity. In addition, a foreign natural person who does not perform activities in the Republic of Serbia can, under the conditions of reciprocity, acquire the right of ownership over an apartment and a residential building under the same conditions as domestic citizens. Exceptionally, the law may provide that a foreign natural or legal person may not acquire a right of ownership to real estate located in certain areas of the Republic of Serbia.

In addition, foreign natural or legal person cannot own agricultural land, unless otherwise provided by the Law on Agricultural Land in accordance with the Stabilization and Association Agreement between the European Communities and their Member States, on the one side, and the Republic of Serbia, on the other side. It should be noted that agricultural land is land used for agricultural production (fields, gardens, orchards, vineyards, meadows, pastures, ponds, reeds and swamps) and land that can be used for agricultural production.

The Republic of Serbia has established contractual reciprocity in terms of acquiring property rights on real estate through legal transactions *inter vivos* by natural persons with only a small number of states. However, existence of contractual reciprocity is not necessary respectively acquisition of property rights can be conducted on the base of *de facto* reciprocity. This means that the legislation of the country whose citizenship has the subject foreigner allows acquisition of real estate for foreigners under conditions not more difficult than for domestic entities respectively that Serbian citizens are allowed to acquire immovable property on the territory of such country. The public notary who should certify the agreement in such a case always starts from the assumption that *de facto* reciprocity always exists, provided that interested parties can prove otherwise. In case it is necessary to determine whether there is reciprocity for a specific country, it is necessary to contact the Ministry of Justice.

When it comes to the possibility of inheritance, foreign natural persons may, under conditions of reciprocity, acquire the right of ownership over real estate located on the territory of the Republic of Serbia under the same conditions as domestic citizens. Serbia has contractual reciprocity with a number of countries; however, *de facto* reciprocity is sufficient for acquiring real estate by inheritance. Moreover, as in the case of contract verification public notaries before whom the inheritance procedure takes place also assume that *de facto* reciprocity always exists, provided that interested parties can prove otherwise.

System of Registration – Real Estate Cadaster

As explained in the previous chapter, in order to become owner of real estate right one must be registered in the Real Estate Cadaster **(“**Cadaster”). Registration in the competent Cadaster is, by rule, conducted *ex officio* by the courts, notary public, public executors and other bodies and organizations which issued or certified the document which is the legal basis for obtaining subject property right.

Cadaster is a public book which is the basic record of real estate and rights on them. It contains data on land (name of cadastral municipality, number, shape, area, manner of use, creditworthiness, cadastral class and cadastral income of cadastral parcel), buildings, apartments

and business premises, separate parts of buildings and other construction facilities (position, shape, area, manner of use, number of floors and rooms), as well as data on the rights on them and the holders of those rights, encumbrances and restrictions.

Cadaster is established throughout the entire territory of the Republic of Serbia and is the only existing registry that records both physical characteristics of the real estate as well as property rights on such real estate.

Competent Cadaster, geodetic organization and notary public can issue excerpt from Cadaster which is an official document containing information on selected real estate respectively data on land (A folio), holder of land rights (B folio), building, apartment and business premises, as separate parts of the building and holders of rights to them (V folio) and encumbrances and restrictions on the subject real estate (G folio). The excerpt from Cadaster includes all cadastral plots, including buildings on them, that belong to the same holder of property rights and which are located in the same cadastral municipality.

Also there is possibility to monitor status of real estate through Cadaster electronic data base which can be found on the following link https://katastar.rgz.gov.rs/eKatastarPublic/. There is possibility of free of charge insight into electronic database and possibility of register user's insight which is charged. Free of charge option provides unregistered users with information on cadastral plot, facilities (including separate parts of such facilities), possessor of property rights as well as existing of any notices and encumbrances (only information on the type of the encumbrance and the date of inscription, without description of content of such encumbrance). In order to have access to more detailed information regarding the possessor of the property rights (address and personal number) and especially in regard to more detailed description of any encumbrance's user must be registered and provided with a personal password.

Protection of transferred ownership rights

Law on Obligations prescribes rules on liability of the person transferring real estate rights which relates to his liability for legal defects of the real estate, the so-called protection against eviction. Although this provision is included in most sale and purchase agreement it is actually not necessary to include it since the protection against eviction is prescribed by the law and is applied in any case (except when the contracting parties explicitly exclude its application).

Protection against eviction basically means that the seller is liable if there is a third party right on the sold item that excludes, diminishes or limits the buyer's right, and when a third party lays down a right to the item, the buyer is obliged to inform the seller, except when the seller already knows of it, and invite him to release the matter from the rights or claims of a third party within a reasonable time.

If the seller does not act upon the buyer's request, in case of full confiscation of the buyer's right, the contract is terminated by law (automatic termination), while in case of reduction or restriction of the buyer's right, the buyer can terminate the contract or demand a proportional price reduction. In any case, the buyer is entitled to compensation for suffered damage.

When applying eviction, it is very important whether the buyer is conscientious or not, or if the buyer at the time of concluding the agreement knew about the possibility of deprivation, or his right to be

reduced or limited, he is not entitled to compensation if this possibility is realized but has the right to request a refund or reduction of the price.

For example, a seller shall be liable should the sold real estate be subjected to a third party's right excluding reducing or restricting a buyer's right, whose existence was not communicated to the buyer. If the buyer be deprived of the object by third party, the contract shall be rescinded on the ground of law, and in case of reducing or restricting buyer's right, he may either repudiate the contract or request a proportionate price reduction. In any case the buyer shall be entitled to compensation for loss which sustained, only if he had a good faith in the moment of concluding the agreement. Otherwise, the buyer shall be entitled to demand only restoration, or reduction of the price.

Lease Agreement

Serbian legislation recognizes lease agreement as a special form of agreement which is in detail regulated by the law. The Law on Obligations does not prescribe a special form of lease agreement, which means that it can be even concluded orally. However, a special form of lease agreement can be stipulated by other laws that are governing any given area (for example apartment lease agreement must be concluded in written form).

The lease agreement can be concluded for a definite time period or for an indefinite period of time. An indefinite lease agreement may be terminated by either party, subject to a notice period. If the length of the notice period is not agreed, or is not determined by law or local customs, it is eight days. It is important to note that after the expiration of the lease agreement concluded for a definite period of time, if the lease is *de facto* still in force (the lessee uses the real estate and the lessor continues to receive the rent) it is considered that the parties concluded new lease agreement under the same conditions as the previous, but for an indefinite period of time.

The contracting parties can agree on specific terms of each agreement, but the main obligations of the lessor and the lessee are always the same. Namely, the lessor is obliged to handover the leased property, to maintain it and to protect the lessee in case of legal and physical defects of the property (protection from eviction). The main obligations of the lessee are to pay the agreed rent and to use the property in accordance with the lease agreement and of course to return the property once the lease is over.

It should be noted that even though the maintenance of the real estate is the obligation of the lessor, the costs of minor repairs caused by the regular use of things, as well as the costs of the use itself, are borne by the lessee. Also, the lessee is not responsible for wear and tear caused by regular use of the property, or for damage resulting from its deterioration.

In case of alienation of the leased real estate, the acquirer shall take over the lessor's place. The acquirer cannot request the lessee to hand over the leased real estate before the expiration of the time for which the lease was agreed, and if the duration of the lease is not determined by the contract or the law, then before the expiration of the notice period. Unless otherwise agreed, the acquirer of the leased property is entitled to the rent starting from the first following deadline after the acquisition of the property, and if the previous lessor received the rent in advance, he is obliged to transfer it to him. When, due to the alienation of the leased real estate, the rights and obligations of the lessor pass to the acquirer, the lessee may terminate the agreement in any case, respecting the legal notice period.

It is more than desirable that the mutual relations between the lessor and the lessee be defined in the widest possible extent, so that the legal security of both contracting parties is raised to the highest possible level.

Mortgage

A mortgage is a lien on real estate that acquired by inscription of the creditor's right in the Cadastre which authorizes the creditor to, if the debtor does not pay the debt on maturity, demand collection of the claim from the value of the real estate, before ordinary creditors and later mortgage creditors.

The mortgage covers all constituent parts of the real estate, natural fruits that are not separated from the real estate (if they exist), unless otherwise determined by the mortgage agreement; real estate assets determined by the mortgage agreement, but not things owned by third parties and all improvements and increases in the value of real estate that occurred after the mortgage was established.

Mortgage contract or pledge statement must be concluded either in the form of a public notary deed or as a notarized document (solemnisation). In case the creditor wants to ensure the direct implementation of enforcement (judicial or extrajudicial) on the basis of the mortgage contract respectively the pledge statement the contract must be concluded in the form of a public notary deed.

It should be noted that in the case of establishing the mortgage on building under construction (for the sake of project financing for example) the mortgage is in fact inscribed on the land on which the building is being built. Upon completion of the construction, the mortgage is registered simultaneously with first right of ownership on building, *ex officio*, which in fact means that a mortgage on building under construction by the force of law turns into the mortgage on building respectively into the mortgage on each of separate part upon their registration in the Cadastre.

Separate parts of the building (apartments, business premises) under construction can also be separately listed as subjects of a mortgage (for the sake of obtaining bank credit for buying an apartment under construction) on the basis of the specification of separate parts of the building from building permit and information from the pledge statement. Such registration of mortgages shall once again be carried out on the land itself, because at the moment of the registration of such mortgages, separate parts of the building do not exists as such in the Cadastre, so as soon as they are registered, the mortgages will *ex officio* be "transferred" from the land to each particular separate part to which they relate.

Restitution of deprived property and compensation

Property that were nationalized from natural persons and specific legal entities on the territory of the Republic of Serbia, by virtue of regulations on agricultural reform, nationalization, sequestration, as well as other regulations, in force after March 9, 1945, and transferred into national, state, social and cooperative property, can be returned or compensated to the heirs of the previous owners in accordance with the Law on Restitution and Compensation.

Property can be returned in kind if it is still in the public ownership, or by compensation in the form of government bonds or in money if the property is in private ownership. The following real estate in public ownership is subject to restitution: construction land, agricultural land, forests and forest

land, residential and office buildings, apartments and business premises and other objects that exist on the date of entering into force of this Law.

Entities envisaged as debtors of restitution of the nationalized property in kind are the Republic of Serbia, autonomous province, local self/government unit, public enterprise, a company or other legal entity founded by major social capital and cooperative, including companies and cooperatives, including companies and cooperatives in bankruptcy and liquidation procedures, which are, on the date of entering into force of this Law the owner, possessor or holder of the right to use or dispose of the nationalized property – concerning the right that belongs to them. Compensation shall be undertaken by issuance and delivery of the government bonds of the Republic of Serbia, while the payment of the advance payment of compensation shall be paid in money. The total amount of compensation on the grounds of nationalized property of one former owner, regardless of the grounds, cannot exceed the amount of EUR 500.000,00.

Property that can be restituted cannot be subject of alienation, mortgage or pledge prohibition of alienation and lien, from the entry into force of the Law until the enforceable termination of the restitution procedure. The act of alienation and encumbrance of such property shall be null.

Because of the above stated, it is important to conduct legal due diligence in regard to possible submitted restitution claims when planning to obtain publicly owned property from the entities stated above as the debtors of the restitution of nationalized property.

Legal framework

For the purpose of easier understanding of the subject issues we have provided relevant legal framework containing brief outline of regulations related to property rights and in particular rights on real estate. In this respect, the main laws covering the subject matter of the Serbia Guide are as follows:

- Law on Property Relations ("Official gazette of SFRY", No. 6/1980 and 36/1990, "Official gazette of SRJ", No. 29/1996 and "Official Gazette of RS", No. 115/2005 – other law);
- Law on Real Estate Transfer ("Official Gazette of RS", No. 93/2014, 121/2014 and 6/2015);
- Law on State Land Survey and Real Estate Registry ("Official Gazette of RS", No. 72/2009, 18/2010, 65/2013, 15/2015 – CC decision, 96/2015, 47/2017, 113/2017 – other law, 27/2018 – other law, 41/2018 – other law and 9/2020 – other law);
- Law on the Procedure of Registration in the Cadaster of Lines and Real Estate ("Official Gazette of RS", No. 41/2018, 95/2018, 31/2019 and 15/2020);
- Law on Public Notaries ("Official Gazette of RS", No. 31/2011, 85/2012, 19/2013, 55/2014 – other law, 93/2014 – other law, 121/2014, 6/2015 and 106/2015);
- Law on Agricultural Land ("Official Gazette of RS", No. 62/2006, 65/2008- other law, 41/2009, 112/2015, 80/2017 and 95/2018 – other law);
- Law on Forests ("Official Gazette of RS", No. 30/2010, 93/2012, 89/2015 and 95/2018 – other law);
- Law on Public Property ("Official Gazette of RS", No. 72/2011, 88/2013, 105/2014, 104/2016- other law, 108/2016, 113/2017, 95/2018 and 153/2020);

- Law on Obligations ("Official Gazette of the SFRJ", No. 29/1978, 39/1085, 45/1989 – CC decision and 57/1989, "Official Gazette of the SRJ", No. 31/1993 and "Official Gazette of SCG", No. 1/2003 – Const. Law and "Official Gazette of RS", No. 18/2020);

- Law on Planning and Construction ("Official Gazette of RS", No. 72/2009, 81/2009, 64/2010 – CC decision, 24/2011, 121/2012, 42/2013- CC decision, 50/2013- CC decision, 98/2013- CC decision, 132/2014, 145/2014, 83/2018, 31/2019 – other law, 9/2020 and 52/2021);

- Law on Mortgage ("Official Gazette of RS", No. 115/2005, 60/2015, 63/2015 – CC decision and 83/2015);

- Law on Housing and Building Maintenance ("Official Gazette of RS", No. 104/2016 and 9/2020 – other law);

- Law on Expropriation ("Official Gazette of RS", No. 53/1995, "Official Gazette of the SRJ", No. 16/2001- FCC decision and "Official Gazette of RS", No. 20/2009, 55/2013- CC decision and 106/2016- authentic interpretation);

- Law on Property Restitution and Compensation ("Official Gazette of RS", No. 72/2011, 108/2013);

- Law on Value Added Tax ("Official Gazette of RS", No. 84/2004, 86/2004, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014, 68/2014, 142/2014, 5/2015, 83/2015, 5/2016, 108/2016, 7/2017, 113/2017, 13/2018, 30/2018, 4/2019, 72/2019, 8/2020 and 153/2020);

- Law on Corporate Income Tax ("Official Gazette of RS", No. 25/2001, 80/2002, 80/2002, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014, 142/2014, 91/2015, 112/2015, 113/2017, 95/2018, 86/2019, 153/2020 and 118/2021)

- Law on Personal Income Tax ("Official Gazette of RS", No. br. 24/2001, 80/2002, 80/2002 – other law, 135/2004, 62/2006, 65/2006 , 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 – CC decision, 7/2012, 93/2012, 114/2012 – CC decision, 8/2013, 47/2013, 48/2013 – cor., 108/2013, 6/2014, 57/2014, 68/2014 – other law, 5/2015, 112/2015, 5/2016, 7/2017, 113/2017, 7/2018, 95/2018, 4/2019, 86/2019, 5/2020, 153/2020, 156/2020, 6/2021, 44/2021, 118/2021, 132/2021 and 10/2022);

- Law on Property Taxes ("Official Gazette of RS", 26/2001, "Official Gazette of SRJ", no. 42/2002 – CC decision and "Official Gazette of RS", no. 80/2002, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 – CC decision, 47/2013, 68/2014 – other law, 95/2018, 99/2018 – CC decision, 86/2019, 144/2020 and 118/2021).

For more information on this or any other topic related to tax or business, you are free to write to RSM Serbia at office@rsm.rs at any time or call us at +381.11.20.53.557

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