

LAW ON PUBLIC NOTARIES

CURRENT SITUATION

The Law on Public Notaries (RS Official Gazette No 31/2011, 85/2012, 19/2013, 55/2014 – as amended, 93/2014 – as amended, 121/2014, 6/2015 and 106/2015) (hereinafter: “the Law”), in application since 1 September 2014, introduced public notaries as a legal profession within the Serbian legal system.

Public notaries provide the following services:

- Drafting and notarization of documents important for legal transactions performed by natural persons and corporate clients, such as the notarization of various types of contracts in the area of corporate law, torts and obligations, inheritance and family law, lien mortgage statements and other statements establishing, changing or terminating a legal relationship. Depending on the type of document, the form varies from signature notarization to the strictest forms of notarial records. Since 1 March 2017, the notarization of signatures, transcripts and writs has become a part of the services provided by public notaries. This means that there are no more overlapping responsibilities in this area between courts, municipalities and public notaries, as these may only be performed by public notaries now.
- Transactions and procedures assigned to public notaries by courts. These are primarily probate proceedings, the assignment of which has significantly unburdened courts, out-of-court proceedings for determining boundaries, proceedings regulating the management and use of, or the division of a common asset or property.
- Deposit-related transactions. Parties may entrust a public notary not only with court deposits, but also with cash, securities, writs, documents, art objects, jewellery, and other valuables, except those prohibited by law. When receiving a valuable to be kept in a safe, a public notary is required to issue a notarial deposit certificate.
- Notaries are the so-called “reporting entities,” meaning that they are obliged to send each relevant document which is the subject of the notarization to the relevant cadastre.

COVID-19

There is no impact of the COVID-19 epidemic to the work of public notaries

POSITIVE DEVELOPMENTS

With the adoption of the Law on the Procedure of Registration in Real Estate and Public Utility infrastructure Cadastres (RS Official Gazette No 41/18 and 31/19) and the Law on Electronic Documents, Electronic Identification and Confidential Services in Electronic Transactions (RS Official Gazette No 94/2017), public notaries have faced new challenges. In fact, from 1 July 2018, public notaries became the so-called “reporting entities”, meaning that for the notarization of any document the content of which is subject to registration in the cadastre of real estate or cadastre of public utility infrastructure, public notaries are required to send a copy of that document to the cadastre within 24 hours of notarization, so that it can be registered, and to issue a confirmation thereof to the client. Should a document not be subject to registration, and is related to the transfer of title to a building under construction, a public notary is obliged to deliver such a contract to the cadastre as well, for the purpose of filing it in the records. Additionally, a public notary is also required to deliver copies of tax returns to the cadastre, for the purpose of determining the amount of tax on transfer of absolute titles, and taxes on inheritance and gifts and copies of tax returns, for the purpose of determining a property transfer tax, except in cases when a taxpayer does not agree to have the tax return sent through the public notary’s office, in which case the public notary is required to deliver a record he/she drafted in this regard. Subsequently, the cadastre officially forwards the tax returns to the tax authorities and forwards the document which is the basis for change of ownership over real estate to the public utility bill collection company. Additionally, starting from 31 December 2020, interested persons may obtain an extract from the List of Immovable Property from a public notary. This will be a major step forward in establishing the legal security of real estate-related rights and aligning the factual situation with the situation in public real estate registers. A big step has also been made in the process of digitization and interconnection of the public administration and interconnection between the public administration and public notaries. Namely, the idea is, in the long term, after 31 December 2020, to send these documents to the cadastre in electronic form, through the so-called “electronic counter.” Electronic documents will reduce the use of paper documents, electronic signature will be equivalent to a handwritten signature, and electronic delivery will be legally valid. Instead of having to go to a counter three-four times, the aforementioned laws stipulate that one visit to a public notary will suffice to

complete the notarization, the registration of a document in the cadastre, the submission of the tax returns and the notification of the public utilities company.

As an improvement, we also emphasize that in the past period, the Ministry of Justice has appointed more than ten new public notaries and that they have started working, some of them in the less developed and less populated parts of Serbia.

REMAINING ISSUES

The prices of public notary services remain an acute problem in this area. We note that the public notary fees are somewhat higher than those once paid for the same services at courts and municipalities, especially for the notarization of lien statements, whose price goes as high as several thousand euros. The fee for the notarization of a signature for legal entities is also higher than it used to be.

It is necessary to continue the process of digitization and networking of public notaries with the state administration. Namely, there are still no technical capabilities for notaries to carry out some of their legally established competences. For example, the cadastre of lines ("katastar vodova") has not been properly established, and it is not

possible to electronically send a document notarized by a public notary to the cadastre. Also, new legal solutions have created a problem in practice, so when the delivery of a document is carried out by a public notary ex officio, the client on whose behalf the registration is made, in practice, is no longer in a position to dispose of the request or to withdraw it or modify, or to postpone the sending of a certified document (for example, the client does not have a possibility to use a release statement as a necessary document for the disposal of an unreleased mortgage).

The software used by the public notaries for sending the documents which they notarize to the cadastre of real estate does not allow notaries to send all types of documents which they notarize to the cadastre, even though the content of such documents is subject to registration in the cadastre of real estate (e.g. notarized lease agreement for a building or a separate part of building).

In some cases the notaries have divergent practice, meaning that one notary public refuses to verify a particular document, while the other one accepts the verification of the same document. Although the Chamber of Notary Publics issues the opinions on acting of the notaries in certain situations, such opinions is not obligatory for the notaries.

FIC RECOMMENDATIONS

- Appointment of public notaries in eight underdeveloped cities in Serbia. Continue with the process of digitization and networking of the state administration with public notaries, in order to enable the implementation of all legal competencies of public notaries. (2)
- Enable the disposition of clients' requests toward the cadastre in situations when the delivery of the document is carried out by a public notary ex officio. (3)
- Further reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons. (3)
- Further improvements in communication between the public notaries and the cadastre of real estate, including the possibility for notaries to initiate registration of leases on buildings (when applicable). (2)
- Unification of the practice of notary publics to obligatory implementation of the opinions of the Chamber of Notary Publics. (3)