

LAW ON PUBLIC NOTARIES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2019			√
Reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons.	2017			√
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)	2020		√	
Unification of the practice of notary publics to obligatory implementation of the opinions of the Chamber of Notary Publics.	2020		√	
Preventing notaries from denying verification due to circumstances that they are not obliged by law to determine for a certain form of certification.	2021			√

CURRENT SITUATION

Since the entry into force of the Law on Public Notaries ("Official Gazette of RS", Nos. 31/2011, 85/2012, 19/2013, 55/2014 - other law, 93/2014 - other law, 121/2014, 6/2015, and 106/2015), the institution of public notaries has significantly contributed to legal certainty and the efficiency of transactions in the territory of the Republic of Serbia. Based on observations of the work of public notaries so far, it is possible to objectively assess their impact on the legal system. The main characteristics of the current state include:

- Relief of the courts: With the introduction of public notaries, the burden on courts has been significantly reduced, as certain activities that were previously within the jurisdiction of the courts (such as the notarization of contracts and other documents, handling probate procedures, etc.) have been transferred to public notaries.
- Legal certainty: Public notaries play a key role in ensuring legal certainty in legal transactions, especially in areas such as real estate transactions, the establishment of pledge rights, and the conclusion of other contracts. Public notaries conduct legality checks of the legal transaction that is the subject of notarization, as well as checks related to the parties themselves, i.e., whether the parties have the appropriate authority to conclude contracts and dispose of their rights under the agreed conditions.

- Availability of services: Over time, the number of public notaries has significantly increased, providing greater access to their services for economic entities. Improved geographical coverage facilitates access to these services and allows for quicker scheduling of notarization appointments.
- Technological improvements: The implementation of modern technologies, including networked databases and communication platforms with other state bodies, has enhanced the efficiency of public notaries' work. This digitalization has shifted the burden of collecting additional documentation for notarization purposes from the parties to the public notaries, speeding up transactions and reducing costs for the parties.
- Challenges and problems: Despite significant progress, there are certain inconsistencies in the application of the law, as well as a need for additional education and training, along with further improvement of the technologies used in the work of public notaries.

The current state of the public notary system in Serbia reflects a high level of stability and successful integration into the legal framework, significantly contributing to legal certainty and transaction efficiency.

POSITIVE DEVELOPMENTS

With the adoption of the Law on the Procedure for Registration in the Real Estate and Infrastructure Cadastre ("Official

Gazette of RS”, Nos. 41/2018, 95/2018, 31/2019, 15/2020, and 92/2023) and the Law on Electronic Documents, Electronic Identification and Trust Services in Electronic Business (“Official Gazette of RS”, Nos. 94/2017, and 52/2021”), public notaries have become so-called “obligatory submitters” to the Real Estate and Infrastructure Cadastre. This means that public notaries are obliged, within 24 hours of notarizing documents suitable for registration in the real estate cadastre, to electronically submit these documents to the real estate cadastre for the registration of rights and to issue a certificate to the parties. These procedures have significantly accelerated the process of implementing changes in the real estate cadastre and reduced the risk of parties influencing the transaction through unauthorized disposals aimed at preventing the implementation of changes in the real estate cadastre.

Public notaries have also taken on the obligation to submit tax return for the determination of taxes on the transfer of absolute rights, inheritance, and gift taxes, as well as property tax return related to transactions subject to notarization to the real estate cadastre. The real estate cadastre subsequently forwards these tax returns to the competent tax authorities.

Since January 1, 2021, all documents submitted to the real estate cadastre must be submitted exclusively in electronic form via the e-counter, reducing the use of paper documentation and simplifying the process before the cadastre itself. Parties can now complete everything in one place with the public notary – from the notarization of documents and registration in the real estate cadastre to the submission of tax declarations.

REMAINING ISSUES

One of the primary issues that has arisen in practice is the issue of fees for public notary services. These fees are significantly higher compared to the fees that courts and municipalities used to charge for the same services. A particular increase in costs has been noted in the notarization of pledge statements, where fees can reach several thousand euros.

In practice, an additional problem has been identified in the interpretation of the provisions regarding the maximum fee that public notaries can charge, particularly in transactions exceeding RSD 386,000,000. The general rule is that in the case of notarizing preliminary agreements, annexes to contracts, as well as terminations of preliminary

agreements or contracts, the notary fee is calculated at 50% of the total fee for the entire transaction. According to the public notary tariff, the maximum fee a notary can charge for a transaction is RSD 600,000 plus VAT. However, in these situations, public notaries interpret that the maximum fee limit applies to each individual action within a single transaction. This has practically led to a significant increase in costs for the parties, who had to pay double fees compared to what they would have paid if only the contract had been notarized. For example, if the contracting parties decide to conclude a preliminary agreement before the contract, and the value of the transaction exceeds RSD 386,000,000, the notaries will charge RSD 600,000 + VAT for the preliminary agreement and again for the contract. In these cases, the notary fee amounts to RSD 1,200,000 + VAT.

Furthermore, to establish more efficient communication between public notaries, the real estate cadastre and the tax administration, it is necessary to continue the process of digitalization and networking of public notaries with state institutions. In the current system, after notarizing the document that effectuates changes in the real estate cadastre, the public notary is obliged to electronically enter all documents into the application for communication with the cadastre and tax administration. However, apart from the digital entry of documents, the public notary must manually enter all relevant data from the documentation, which is then manually entered again by the real estate cadastre officials. This process requires simplification to avoid duplication of work and improve efficiency, as in practice, the real estate cadastre often takes the longest time to implement the appropriate changes.

Existing legal solutions have also brought new practical problems. In situations where the notary is officially submitting the document, the party in whose favor the registration in the real estate cadastre is being made no longer has the option to withdraw, modify, or delay the submission of the notarized document (such as a cancellation permit that can be used for the disposal of an unused mortgage). This situation is not in line with the practice of comparative legal systems in neighboring countries, where parties are allowed greater flexibility in these procedures. Although this problem has existed for some time, little has been done so far to resolve it.

Additional problems include inconsistent practices among public notaries and the requirement of certain notaries for additional documentation or the fulfillment of conditions

during notarization that are not explicitly prescribed by law. This practice leads to legal uncertainty and unpredictability, making it difficult for parties to plan their transac-

tions, as during contract negotiations, they often have to consult with public notaries to confirm whether certain contract provisions would be acceptable for notarization.

FIC RECOMMENDATIONS

- Reduce public notary service fees and adjust them to the financial capacities of citizens and businesses.
- Improve and more efficiently integrate communication between public notaries and state authorities.
- Allow parties to control their requests regarding the real estate cadastre in cases where the notary, as the obligatory submitter, submits a request on their behalf.
- Allow public notaries to initiate certain rights registrations in the real estate cadastre (e.g., lease rights registration), as is the case in certain comparative European legal systems.
- Standardize the practice among public notaries and ensure consistent application of the Public Notary Chamber's guidelines.
- Prevent notaries from refusing notarization for reasons not legally prescribed as grounds for refusal.
- Prescribe effective mechanisms that parties can use to ensure consistent and uniform practices among public notaries.