



GUIDE TO REAL ESTATE LAW

JPM

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2018

TABLE OF CONTENTS

RIGHTS OVER REAL ESTATE

TYPE OF LAND

Agriculture Land

Construction Land

RIGHTS OVER LAND

Ownership right

Right of Use

CONSTRUCTION

**Obtaining of the location
conditions**

Designing

Construction permit

Infrastructure fee

**Technical inspection of
completed works**

Utilization permit

MORTGAGES

Disclaimer:

The sole purpose of this publication is to provide general information about specific topics. It makes no claims to completeness and does not constitute legal advice. The information it contains is no substitute for specific legal advice. By this, readers are instructed to request the specialist advice on particular issues emphasized herein and to verify above introduced statements before relying on them.

If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at JPM Jankovic Popovic Mitic.

Real Estate, land and buildings in the Republic of Serbia may be in public and private ownership¹ as recognized by the Constitution of the Republic of Serbia. The private ownership over Real Estate may be both ownership of natural persons and ownership of legal entities - companies.

The legislative framework regulating the Real Estate sector in Serbia consists of numerous laws and by-laws.

I GENERAL REMARKS ON RIGHTS OVER REAL ESTATE

The laws of Serbia recognize the constitutive registration system in acquisition of rights over Real Estate, meaning that *modus acquirendi* for Real Estate is the registration of rights in the Public Real Estate Register, held by a local authorized Cadaster Office.

Registration is executed on grounds of:

1. a title deed/agreement, or
2. a judicial or an administrative decision), which must contain number of mandatory elements:
 - a) precise definition of a property, including address and surface, cadastral parcel number, cadastral municipality;
 - b) explicit consent for registration (*clausula intabulandi*) issued by a transferor;
 - c) agreements must be verified before a local competent public notary, while a court or an administrative decision must be final.

Data on Real Estate registered in the Cadaster Office is publicly available. The Cadaster Office publishes current registration data on its web-site (<http://katastar.rgz.gov.rs/KnWebPublic/Default.aspx>), but scope of published data is limited, and is not official. However, any interested party can submit request for obtaining Real Estate cadaster Excerpt, and, after paying adequate fee, it shall be issued.

On the 1 June 2018, Immovable property and lines registration procedure in Cadaster Act is adopted, with a purpose of, before all, speeding up and simplification of registration processes in Cadaster. As a law principle, officially principle is prescribed, meaning that registration process is launched *ex officio*. Notaries, Public Enforcers, and Courts are now obliged to inform Cadaster on performed changes, and to deliver all necessary documentation, in order to Cadaster conduct a change. Pursuant to this Act, in the future years, gradually, all documents delivered to the Cadaster, are to be electronic, and only entities properly registered and connected to the Cadaster, will be able to communicate with Cadaster. Besides, above mentioned Notaries, Public Enforcers, and Courts, this will be allowed to lawyers. Data on property entered into the Cadaster is deemed to be correct and trustworthy, and a person or an entity shall not be adversely affected when relying on such registered data. The general principle provides for the right of indemnification from the transferor, in the event that an acquirer loses its title as a result of incorrect or outdated data registered in the Cadaster.

Foreign natural persons may acquire ownership over Real Estate, under the condition of reciprocity. Foreign legal entities may acquire ownership over real estate intended for conducting business in Serbia, under the condition of reciprocity. The list of countries with which Serbia has established reciprocity in granting the right to acquire ownership over real estate is published on the website of the Ministry of Justice of Republic Serbia (<http://www.mpravde.gov.rs/tekst/3579/pravo-stranaca-da-sticu-nepokretnosti.php>).

Pursuant to the Agriculture Land Act, foreign persons were not entitled to acquire the ownership right over agricultural land in Serbia, until latest Amendments and modification of Agriculture Land Act, that occurred in 2017. By these amendments, foreigners theoretically can acquire ownership over agriculture land, but number of conditions must be fulfilled in order to do so.

¹ Apart from the cited types of rights, there are other types of rights such as social or state ownership, or right to use, which represent the residual from the previous political systems. Right to use can be converted to ownership, with or without compensation, while social ownership was abandoned in 2006, and portions left should be converted, otherwise, it cannot be transferred.

In general, the possibility of acquiring real estate in Republic of Serbia depends on various conditions. Fulfilment of such conditions should take place before real property is acquired and registered in the public real estate register. The role of a lawyer in any real estate transaction is to verify the fulfillment of required conditions, to complete drafting of transaction documents and to adhere to relevant applicable procedures. JPM Jankovic Popovic Mitic law office understands the needs of clients and is therefore able to provide full legal service in real property transactions and to propose an adequate deal structure, which should meet the needs of a client and optimize risks and costs associated with real estate transactions.

II TYPE OF LAND

In Serbia, land can be categorized as either agricultural land or construction land. Categorization of the land further determines its legal status and applicable regulations affecting potential acquisition, construction, usage of land, and other significant aspects of the acquisition.

(i) Agriculture Land

Agricultural land is governed by the Agriculture Land Act, which stipulates specific rules related to the agricultural land.

One of such specific rules is a statutory pre-emptive right of neighboring parcels' owners. The pre-emptive right means that an owner is obliged to offer the subject land to owners of neighboring land under the same conditions it intends to sell it to an interested purchaser. The offer must be placed in writing and include information on the land, purchase price and other purchase conditions. If owners of neighboring parcels do not respond to the offer within 15 days from the receipt of the offer, the owner of the land is free to sell the subject land to any third party under the conditions stipulated in the offer.

Pursuant to the Agriculture Land Act, agricultural land is used for agricultural production and it may not be used for other purposes, except in cases explicitly stipulated by the law.

Such exception includes the change of purpose from agricultural land to construction land, subject to payment of the fee for change of purpose, in the event that the subject land is included in construction zone under a governing spatial plan.

The fee for the change of purpose of land is determined in the amount of 50% of market value of the agricultural land (or alternatively 20% of the market value of construction land, in the event that the change of purpose of use is executed in public interest).

The change of purpose from agricultural to construction land may be executed free of charge in the event that a spatial plan which includes/categorizes the subject land as construction land was adopted prior to July 15th, 1992.

(ii) Construction Land

Construction land as such is determined by a governing spatial plan. Construction land may be used for development of buildings under urban planning conditions stipulated in a spatial plan.

Construction land may be either in public or private ownership.

Public construction land may be acquired by private investors by way of a purchase in public tendering procedure (public bidding or gathering of offers).

III RIGHTS OVER LAND

(i) Ownership right

Both the agricultural and the construction land in Serbia may be in private ownership. The private ownership is regulated by law, as the highest right over real estate, and therefore the limitations of usage/possession/disposal of privately owned land may exist only if prescribed by laws and other regulations, and consented to by its owner.

(ii) Right of use

Significant portions of the construction land within cities in Serbia are in the ownership of the Republic of Serbia – public ownership with registered holder of the right of use over the land. The right of use does not entitle its holder to construct buildings over the subject land². Persons/entities granted with the right of use over the public land under previous laws are entitled to convert such right of use into the ownership right (“Conversion”).

Conversion may be executed either with or without compensation.

Holders of the right of use over public land that do not qualify for the Conversion with compensation are granted Conversion without compensation.

Conversion with compensation is executed in the event that holders of the right of use over the public land are:

1. companies which are, or which were subject of privatization in accordance with laws governing privatization, enforcement or bankruptcy procedure and their legal successors;
2. persons which were granted the right of use for the purpose of construction under the laws valid until May 13th, 2003;
3. entities governed by the laws regulating sporting activities and the associations;
4. state-owned companies; and
5. (entities governed by regulations regarding succession of Former Yugoslavia.

Compensation for Conversion is determined, based on market value of the land, by local administration (city or municipality). The compensation may be paid in a single payment or in 60 equal instalments. In the event of a single payment, the owner is granted with a discount in the amount of 30%. In the event of payment in multiple instalments, the owner must provide a bank guarantee, mortgage or a registered pledge over movables, as a collateral for due payment of the instalments.

The Law on Conversion with compensation prescribes the cases when holders of right of use are entitled to a decrease in the compensation amount they need to pay.

The decrease is allowed in following cases:

1. if the land is situated in rural municipality;
2. if there are buildings developed on the land; and
3. if the part of land being subject of conversion is envisaged for construction of public facilities.

Holders of the right of use may convert their right to the right of long term lease, whereby they would be obliged to develop a location within an agreed time-period. Upon finalization of construction, surface area of a new building shall be considered by authorities when determining deductions from the applicable conversion compensation fee.

² The Law on Conversion with compensation entitles the holders of the right of use to construct buildings but this right was limited in time, for the period of one year after the Law enters into force. Now, construction can be conducted only if the right to use is converted into the ownership right, i.e. prior to construction, conversion must be conducted;

Long Term Lease right over the public construction land, granted to an investor pursuant to the previously valid Planning and Construction Act may also be converted into the ownership right, subject to paying the entire rental amount for the subject land.

IV CONSTRUCTION

The construction of buildings in the Republic of Serbia is regulated by the Planning and Construction Act ("PCA"). Each person intending to construct must previously fulfil two main conditions: (1) obtaining of appropriate rights over land where the construction is intended; and (2) existence of a spatial plan, which allows construction and provides construction parameters. Fulfilment of these two conditions is verified in the procedure for obtaining the construction permit.

Legal framework for construction has significantly changed since the PCA was amended in 2014 with the aim to create more investor-friendly environment. The amended PCA offers significant improvements in the procedure for obtaining construction and utilization permits, by introduction of the unified procedure ("one-stop-shop"). Since the implementation of changes, all necessary documents for construction may be obtained before a single public authority. The amended PCA shortens deadlines for issuance of construction permits and other documents. The unified procedure before such "one-stop-shop" is applicable to obtaining all documents necessary for construction, from design phase up to and including the issuance of utilization permit.

Since 2016, all exchange of documents needed for obtaining Building permits is performed electronically.

Permit issuance procedure and construction is executed as follows:

1. Obtaining of the location conditions

Location conditions are the initial document obtained in the unified procedure. This document contains the urban planning conditions (purpose of use of future building, maximum footprint of the future building, maximum gross surface of above ground floors, number of floors, maximum height of the building, mandatory green surfaces and other conditions).

Urban planning conditions are set out in spatial plans. PCA recognizes several types of spatial plans, categorized by area these covers and the extent of urban planning conditions details it includes. Most significant spatial plans are the General Regulation Plan (enacted for an entire territory of a city or other larger local unit, provides for general urban planning rules and conditions) and Detailed Regulation Plan (enacted for a part of the city or a local unit, providing more detailed urban planning conditions).

Pursuant to the previous law, the existence of a spatial plan was a mandatory condition for construction, i.e. in the event that a spatial plan providing necessary parameters - rules of construction, did not exist, an investor was not able to obtain the construction permit. According to currently valid PCA, in the absence of adequate spatial plan, the construction permit may be issued to the investor on the basis of general rules of planning and construction³. This means that investors are no longer hindered by the lack of planning documentations in the process of obtaining necessary permits.

Each investor shall, prior to detailed designing obtain the location conditions which provide the rules of construction and technical conditions for designing based either on a spatial plan or general rules of construction.

Apart from the rules of construction, location conditions include technical conditions for connecting future buildings to traffic and public utility services.

³ The cited rule is not unconditional, i.e. for the purpose of issuance of the construction permit the existence of the spatial plan providing for at least the border of the future building (regulation line) is mandatory.



Pursuant to the previously applicable law, an investor had to obtain technical conditions for connecting future buildings to traffic and public utility networks from each and every utility provider, which was time consuming. This was detected as one of the obstacles for efficient issuance of construction permits. The current PCA introduced the obligation of “one-stop-shop” administration to obtain the technical conditions and include them in the mentioned location conditions.

The location conditions are issued based on the Concept design for future building submitted by an investor. Based on the location conditions, an investor produces the designs.

2. Designing

In course of obtaining the construction permit, an investor has to obtain and submit in the unified procedure the Design for Construction permit, made in accordance with the location conditions.

Upon obtaining the Construction permit and prior to commencement of the permitted works, an investor has to procure the Design for the Execution of Construction Works.

All technical documentation must be drafted by a licensed architect. Technical documentation that is to be submitted in the procedure of obtaining construction permit must be verified by technical control. Technical control demonstrates that the design is drafted in accordance with the law and in line with technical standards for certain types of buildings. Technical control is conducted by a licensed company with relevant technical expertise.

Construction permit

Construction permit is issued by local administration, except for specific facilities for which the construction permit is issued by the Ministry of Republic of Serbia competent for construction affairs (diplomatic buildings, energy facilities of certain capacity, dams, sport stadiums of certain capacity etc.).

Along with the request for issuance of the Construction permit an investor files the evidence of appropriate right over land and the Design for Construction permit, verified by technical control.

Pursuant to the PCA, the construction permit must be issued within 5 days from the date of submission of a complete request.

The construction permit is valid for 2 years. In the event that an investor does not commence construction works, the Construction permit shall cease to be valid. Moreover, construction permit shall cease to be valid in the event that an investor does not obtain the utilization permit within 5 years from the date the construction permit became final and enforceable.

The Construction permit is transferable, i.e. in the event of acquisition of a building under construction, an acquirer may transfer the construction permit into its name, as the new investor.

4. Infrastructure fee

The Construction permit includes the obligation of an investor to pay the Infrastructure fee. The amount of the Infrastructure fee is determined by multiplying the net surface area of future building with the index published by a local administration. The index varies depending on a building's purpose of use (residential, commercial, production etc.) and the location of land where construction is planned. As an example, in Belgrade the Infrastructure fee is not payable for the construction of production facilities, i.e. the index is 0. On the other hand, for the construction of commercial buildings in central zones of Belgrade the Infrastructure fee amounts to approximately EUR 220 per sq. m of net surface area of a future building.

The amount of the Infrastructure fee may be reduced for costs that an investor incurred by financing development of necessary infrastructure.

The Infrastructure fee may be paid in a single instalment in which case a discount may be granted up to 30%, or in several instalments, in which case a suitable collateral (a bank guarantee or a mortgage) has to be provided.

The Investor removing (demolishing) an existing building developed in accordance with the law, for the purpose of constructing a new building, is obliged to pay the Infrastructure fee solely for the difference in surface areas (in sq. m) of the future building and the removed building.

Local authorities determine the Infrastructure fee at a local level, however the law limits variations in the fees.

5. Technical inspection of completed works

Upon finalization of construction works, an investor is obliged to, at its own expense, to engage a licensed company to perform technical inspection of the works.

Technical inspection determines whether the works were executed fully in accordance with the construction permit, approved technical documentation and the technical standards and regulations.

6. Utilization permit

Upon receipt of the technical inspection report with recommendation that the utilization permit is issued for the subject works, an investor is issued with the utilization permit.

The utilization permit is the final document in course of construction and it:

- a) proves that the construction is finalized in accordance with construction permit, approved technical documentation and technical standards and regulations;
- b) proves that a newly constructed building is suitable and ready to be used, and
- c) serves as a document based on which an investor may register its ownership over the newly constructed building in the Cadaster.

V MORTGAGES

The acquisition of real estate and construction of new buildings in the Republic of Serbia is usually financed by third parties - mainly banks. During the last decade, mortgages were the main security for loans granted by banks for the purpose of acquisition and construction.

The mortgages in the Republic of Serbia are regulated by one single law. The Law on Mortgages

- a) allows easier and faster constitution of mortgages and
- b) provides possibility of time-efficient and issue-free sale and collection in the case of debtor's/mortgagor's default.

These two possibilities provide sufficient security to a creditor and facilitate time-efficient and issue-free approval of loans for investors, thus creating a more investor-friendly environment.

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