



**Crna Gora reguliše oblast posredovanja u prodaji nepokretnosti**

**Montenegro regulates the Real Estate Brokerage**

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**REAL ESTATE AGENT**

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**Ministarstvo ekonomskog razvoja i turizma donijelo je Nacrt Zakona o posredovanju u prometu i zakupu nepokretnosti.**

**Donošenje ovog zakona je motivisano prvenstveno potrebom da se suzbije siva ekonomija koja cvjeta u oblasti posredovanja u prometu nepokretnosti. Drugi, jednako važan, motiv je zaštita učesnika u prometu nepokretnosti i sprečavanje zloupotreba i prevara prilikom prometovanja nepokretnosti.**

**Ključna novina koju ovaj Zakon donosi je uvođenje i licenciranje instituta posrednika i agenta u prometu i zakupu nepokretnosti.**

**The Ministry of Economic Development and Tourism adopted the Draft Law on Real Estate Brokerage.**

**The adoption of this law is motivated primarily by the need to suppress the grey economy that is flourishing in the field of real estate brokerage. The second, equally important motive is the protection of participants and the prevention of abuses and fraud in real estate sales.**

**The key novelty that this Law brings is the introduction and licensing of the institutes of Real Estate Brokers and Agents in the sales and lease of real estate.**

Posrednik je pravno lice ili preduzetnik koje je upisano u javni Registar posrednika. Jedan od osnovnih uslova za upis u Registar posrednika je da kod posrednika postoji bar jedan zaposleni koji obavlja rad sa punim radnim vremenom i koji ima položen stručni ispit za obavljanje poslova posredovanja u prometu i zakupu nepokretnosti – agent.

Stručni ispit sprovodi Privredna komora, a polaže se pred Komisijom koju čini najmanje jedan član iz Udruženja posrednika u prometu nepokretnosti i dva iz nadležnog Ministarstva.

Uslov za polaganje stručnog ispita je da kandidat ima prebivalište ili boravište na teritoriji Crne Gore i najmanje IV nivo kvalifikacija nacionalnog nivoa kvalifikacija, a ispit se polaže na crnogorskom jeziku.

A Real Estate Broker (“Broker”) is a legal entity or entrepreneur that is registered in the public Register of Real Estate Brokers. One of the basic conditions for registration in the Register of Real Estate Brokers is that there is at least one employee with the Broker who works full-time and has passed the professional exam for performing intermediation in the sales and lease of real estate – Agent.

The professional exam is conducted by the Chamber of Commerce and is taken before the Commission consisting of at least one member from the Association of Real Estate Brokers and two from the competent Ministry.

The condition for taking the professional exam is that the candidate has a domicile or residence in the territory of Montenegro and at least the 4th level of qualifications of the national qualification level, and the exam is taken in the Montenegrin language.

Obavljanje ovih poslova bez upisa u Registar posrednika predstavlja prekršaj za koji je zapriječena novčana kazna do maksimalnih 40.000,00 eura, dok je u slučaju da poslove posredovanja kod posrednika obavlja lice koje nema položen stručni ispit propisana maksimalna novčana kazna od 10.000,00 eura.

Posrednik je dužan da ima zaključen ugovor o osiguranju od profesionalne odgovornosti vrijednosti najmanje 20.000,00 eura po štetnom događaju, odn. min. 60.000,00 eura za sve štetne događaje u jednoj godini.

Zakon uvodi zabranu obavljanja istovrsnih poslova što znači da agent ne može bez saglasnosti posrednika kod kojeg je zapošljen obavljati poslove posredovanja ni druge poslove identične ili slične posredovanju, niti pružati usluge u vezi sa poslom koji je predmet posredovanja za sebe ili za drugog posrednika.

Performing the tasks without registration in the Register of Real Estate Brokers is an offence for which a fine of up to EUR 40,000.00 is threatened, while in the event that brokering activities at the Real Estate Broker's office are performed by a person who has not passed the professional exam, a maximum fine of EUR 10,000.00 is issued.

The Broker is obliged to have concluded a contract for professional liability insurance worth at least EUR 20,000.00 per adverse event, i.e., min. EUR 60,000.00 for all adverse events in one year.

The law introduces a prohibition on performing equivalent tasks, which means that the Agent cannot, without the consent of the Broker for whom he works, perform intermediary activities or other activities identical or similar to intermediation, nor provide services related to the work that is the subject of intermediation for himself or for another Broker.

U slučaju da prekrši zabranu agent je dužan da posredniku nadoknadi štetu ili da mu prenese zaradu iz takvog posla.

Zakonom se definiše ugovor o posredovanju u prometu odn. zakupu nepokretnosti kao imenovani ugovor koji se zaključuje u pisanoj ili elektronskoj formi, a kojim se posrednik obavezuje da će nastojati da nađe i dovede u vezu sa nalogodavcem lica radi pregovaranja i zaključenja određenog pravnog posla o prenosu, zakupu ili zasnivanju drugog prava na nepokretnosti, a nalogodavac se obavezuje da mu za to isplati određenu nadoknadu.

Dodatne obaveze posrednika koje definiše Zakon uključuju obavezu posrednika da izvrši kontrolu isprava koje se odnose na nepokretnost koje je predmet posredovanja i upozori nalogodavca na sve eventualne nedostatke u istoj, da obavlja radnje radi prezentacije na tržištu nekretnina, da nastoji da omogući pregled nepokretnosti i da posreduje u pregovorima, a nalogodavac može posebnim i izričitim punomoćjem ovlastiti posrednika da u njegovo ime zaključi pravni posao, kao i da primi cijelu ili dio kupoprodajne cijene ili zakupnine.

In the event that he/she violates the prohibition, the Agent is obliged to compensate the Broker for the damage or to transfer the earnings from such a transaction.

The law defines the Contract in Real Estate Brokerage as a designated contract that is concluded in written or electronic form, and by which the Broker (or Agent) undertakes to find and bring together the principal and an individual for the purpose of negotiating and concluding a certain legal work on the transfer, lease or establishment of another real estate right, while the principal is obliged to pay him a certain compensation for it.

Additional obligations of the Broker defined by the Draft Law include the obligation of the Broker to carry out the control of documents relating to the property that is the subject of intermediation and warn the principal of any possible deficiencies regarding them, to perform actions for presentation on the real estate market, to try to enable the inspection of real estate and to mediate in negotiations, and the principal may, by a special and express power of attorney, authorise the Broker to conclude a legal work on his behalf, as well as to receive whole or part of the purchase price or rent.

**“ The adoption of this law is justified and necessary and that its adoption and consistent application will greatly contribute to making the real estate market much more regulated and even more attractive for serious clients. ”**



Posrednik također može za potrebe preuzimanja, čuvanja i predaje novca u ime i za račun nalogodavca otvarati posebne, depozitne račune koji ne mogu biti predmet prinudnog izvršenja protiv posrednika.

Posrednik po pravilu stiče pravo na naknadu u momentu zaključenja ugovora za koji je posredovao, a imaće pravo i na posredničku naknadu ukoliko u periodu od 12 mjeseci od prestanka ugovora o posredovanju nalogodavac sa trećim licem zaključi pravni posao koji je posljedica aktivnosti posrednika prije prestanka ugovora o posredovanju.

Imajući u vidu probleme koji se javljaju u praksi, odn. činjenicu da obaveze iz zaključenih ugovora ne budu ispunjenje smatramo da bi bilo cjelishodno da isplata posredničke naknade bude uslovljena isplatom dijela ili cijele kupoprodajne cijene ili zakupnine.

The Broker may also, for the purpose of receiving, storing, and handing over money in the name and for the account of the Principal, open special deposit accounts that cannot be subject to enforcement against the Broker.

By the rule, the Broker acquires the right to compensation at the moment of conclusion of the Contract for which he has intermediated, and will also be entitled to an intermediary fee if, within a period of 12 months from the termination of the Contract, the principal concludes a legal work with a third party that is a consequence of the activities of the Broker before the termination of the Intermediation contract.

Bearing in mind the problems that arise in practice, i.e., the fact that the obligations from concluded contracts are not fulfilled, we believe that it would be expedient for the payment of the brokerage fee to be conditioned by the payment of a part or whole of the purchase price or rent.



Posrednik je dužan da odredi opšte uslove poslovanja koji naročito sadrže: iznos posredničke naknade, odn. način određivanja iznosa posredničke naknade; opis poslova koje je dužan da obavi za nalogodavca i vrstu i visinu troškova za dodatne usluge.

Ovi opšti uslovi poslovanja predstavljaju sastavni dio ugovora o posredovanju a posrednik je obavezan da ih istakne na vidnom mjestu u svom poslovnom prostoru i na internet stranici, čime se postiže transparentnost u radu.

Rok za usklađivanje poslovanja posrednika je 12 mjeseci od dana njegovog stupanja na snagu.

Cijenimo da je donošenje ovog zakona opravdano i nužno, te da će njegovo usvajanje i dosljedna primjena umnogome doprinijeti da tržište nekretnina bude znatno uređenije i još atraktivnije za ozbiljne klijente.

The Broker is obliged to determine the general terms and conditions, which in particular contain: the amount of the intermediary fee, i.e., the method of determining the amount of the intermediary fee; a description of the jobs he is obliged to perform for the principal and the type and amount of costs for additional services.

These general terms and conditions are an integral part of the Contract, and the Broker is obliged to display them in a visible place on their business premises and on the website, thus achieving transparency in their work.

The deadline for harmonization of the business of the Brokers is 12 months from the date of its entry into force.

We appreciate that the adoption of this law is justified and necessary and that its adoption and consistent application will greatly contribute to making the real estate market much more regulated and even more attractive for serious clients.



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