

# Serbia: Public notaries and real estate transactions

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Public notaries (*javni beležnici*) have been active in Serbia for already a month<sup>[1]</sup>. This brings, *inter alia*, a number of novelties in real estate transactions.

Agreements on disposal of rights over immovable property, including mortgage agreements and unilateral mortgage statements, have to be concluded in the form of a notarial deed (*javnobeležniški zapis*). A failure to conclude the agreement/statement in the said form makes the transaction null and void. When drafting a notarial deed, the notary will check the content of the agreement. In case some notaries take a pro-active approach and start intervening in the negotiated content of the agreement, this will inevitably cause problems in practice, especially in the execution of complex arrangements between legal entities.

Notarial deed represents enforcement title (on the basis of which one may directly initiate enforcement proceedings), provided it contains an explicit statement of the debtor that direct enforcement may be initiated on the basis of the deed once the obligation becomes due and payable.

The parties may conclude in the form of notarial minutes (*javnobeležniški zapisnik*) an agreement whereby the debtor recognises the existence of a monetary claim and establishes a mortgage on its immovable (or pledge on its movables) as security for such claim. The notarial minutes have the force of a court settlement, i.e. a court decision, and represent the basis for registration of the mortgage (or pledge) as security for the existing claim referred to in the document. Mortgage registered on the basis of a court settlement concluded in the form of notarial minutes is subject to judicial enforcement.

Pursuant the Transfer of Immovable Property Act,<sup>[2]</sup> agreement on transfer of immovable property has to be prepared by the notary public licensed for the territory where the relevant immovable is located. No public notaries have yet been appointed for certain territories. In those territories, all notarial documents shall be in the interim prepared by local court. It may be expected that this transitory solution will create a bottle neck in legal transactions with immovables, due to organizational and logistic difficulties immanent to Serbian judiciary.

Given that the Transfer of Immovable Property Act does not apply to encumbrances on immovable property, notarial deed containing mortgage agreement or unilateral mortgage statement may be prepared by any notary in Serbia, regardless of the property location.

The new regulations also bring about increase in the cost of transactions with immovable property. Notary's fee for preparation of notarial deed depends on the value of the transaction. The fee for preparation of unilateral mortgage statement is 60% lower than the fee for preparation of mortgage agreement. The cap on the fee for notarial deed is set at approx.. EUR 5,000. For the sake of comparison, prior to the introduction of notaries, the maximum fee for judicial authentication of parties' signatures on transactional documents dealing with immovable was approx. EUR 400.

<sup>[1]</sup> Public Notaries Act (*Zakon o javnom beležništvu*, "Sl. glasnik RS", nos. 31/2011, 85/2012, 19/2013, 55/2014 and 93/2014).

<sup>[2]</sup> Transfer of Immovable Property Act (*Zakon o prometu nepokretnosti*, "Sl. glasnik RS", no. 93/2014).

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U Srbiji već mesec dana (od 1. septembra 2014.) posluju javni beležnici, tj. notari.<sup>[1]</sup> To, između ostalog, donosi brojne novine u transakcijama sa nepokretnostima.

Svi ugovori o raspolaganju pravima na nepokretnostima moraju biti sačinjeni u formi *javnobeležničkog zapisa*, uključujući i ugovor o hipoteci i založnu izjavu. Propust da se ugovor/izjava zaključi u navedenoj formi za posledicu ima ništavost samog pravnog posla. Prilikom sačinjavanja javnobeležničkog zapisa, notar proverava i samu sadržinu ugovora. Ovo, naročito na početku, može usložiti postupak zaključenja kompleksnih ugovora između pravnih lica, ukoliko javni beležnici zauzmu "aktivistički" pristup intervenisanja u sadržinu samog ugovora koji sastave stranke ili njihovi

advokati.

Javnobeležnički zapis predstavlja izvršnu ispravu (dokument na osnovu koga se može pokrenuti izvršni postupak) ako sadrži izričitu izjavu dužnika da se na osnovu te isprave može, po dospelosti obaveze, neposredno sprovesti prinudno izvršenje.

Zakonom o javnom beležništvu je predviđeno da notar može, u formi *javnobeležničkog zapisnika*, utvrditi sporazum stranaka o postojanju novčanog potraživanja i vremenu njegovog dospeća i saglasnost stranaka da se upisom založnog prava na nepokretnosti (ili na pokretnim stvarima) dužnika obezbeđuje novčano potraživanje. Takav zapisnik ima snagu sudskog poravnanja, dakle sudske odluke, i osnov je za upis hipoteke kao obezbeđenja za postojeće potraživanje obuhvaćeno takvim sporazumom. Hipoteka upisana na osnovu sudskog poravnanja zaključenog u obliku notarskog zapisnika može se izvršiti sudskim putem.

Prema Zakonu o prometu nepokretnosti,<sup>[2]</sup> ugovor o prometu nepokretnosti mora biti sačinjeni od strane javnog beležnika na čijem se službenom području nalazi predmetna nepokretnost. Kako još uvek nisu imenovani javni beležnici za područje svih osnovnih sudova u Srbiji, predviđeno je da, do imenovanja javnog beležnika, ugovore i druge akte o prometu nepokretnosti u formi javnobeležničkog zapisa sačinjava sud. Može se očekivati da, usled organizacionih i logističkih poteškoća immanentnih srpskom pravosuđu, ovakvo rešenje stvori usko grlo u prometu nepokretnosti na područjima gde nisu imenovani javni beležnici.

Imajući u vidu da se Zakon o prometu nepokretnosti ne primenjuje na opterećenje nepokretnosti, notarski zapis koji sadrži ugovor o hipoteci (ili založnu izjavu) može sastaviti bilo koji notar u Srbiji, bez obzira na lokaciju nepokretnosti.

Novi propisi donose i poskupljenje transakcija sa nekretninama. Visina notarske nagrade za sačinjavanje javnobeležničkog zapisa zavisi od vrednosti posla, pri čemu je nagrada za jednostrane hipotekarne izjave 60% manja od nagrade za hipotekarni ugovor. U svakom slučaju, maksimalni iznos notarske nagrade za sačinjavanje notarskog zapisa iznosi oko EUR 5.000, dok je ranije, kada je bila dovoljna sudska overa potpisa, maksimalna taksa iznosila oko EUR 400.

<sup>[1]</sup> Zakon o javnom beležništvu ("Sl. glasnik RS", br. 31/2011, 85/2012, 19/2013, 55/2014 i 93/2014).

<sup>[2]</sup> Zakon o prometu nepokretnosti ("Sl. glasnik RS", br. 93/2014).



### **BDK Serbia**

Dobračina 38  
11000 Belgrade  
Tel: (+381) 11 3284 212  
Fax: (+381) 11 3284 213  
[office@bdklegal.com](mailto:office@bdklegal.com)

### **BDK Montenegro**

Bul. Džordža Vašingtona 51  
81000 Podgorica  
Tel: (+382) 20 230 396  
Fax: (+382) 20 230 396  
[office.cg@bdklegal.com](mailto:office.cg@bdklegal.com)

### **BDK Bosnia and Herzegovina (Republika Srpska)**

Gundulićeva 6  
78000 Banja Luka  
Tel: (+387) 51 250 641  
Fax: (+387) 51 250 642  
[office.banjaluka@bdklegal.com](mailto:office.banjaluka@bdklegal.com)

