



# REAL ESTATE CADASTRE REGISTRATION - TOWARDS IMPROVEMENT OF THE LEGAL FRAMEWORK CONTENTS AND IMPLEMENTATION



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## Introduction

**The purpose** of this document is to point out the possibilities of improving the legal framework for the real estate registration system operations, as well as to provide specific recommendations for regulatory amendments, procedures applied by public authorities and holders of public powers, and the functionality of information systems supporting the implementation of cadastre registration procedures. Although the provisions of various regulations are the subject of much of this report, the starting point for all recommendations is how the regulation is implemented.

**Coverage** of this document, both in breadth and depth, goes beyond the legal framework that directly regulates the field of real estate cadastre registration. Breadth wise, the report makes recommendations for legal and institutional system improvements related to the acquisition of real estate rights and conditions for registering those rights in the cadastre in as many as 11 laws; depth wise, the report touches on the content of by-laws, instructions for application of regulations and supervision of implementation and functionality of information systems supporting the implementation of registration procedures. The purpose of this report, on the other hand, is not to cover all the shortcomings of the regulatory framework for use and transfer of real estate rights. Issues that are not directly related to the real estate registration, or real estate rights in the cadastre, are not the focus of this report.

**Key findings and recommendations** have shown that a thoroughly reformed real estate cadastre registration system, the basis of which has been set by adoption of the Law on Real Estate and Utilities Cadastre Registration Procedure, can work. All participants in the procedure this Law refers to have aligned their actions with the subject law, and the functioning of information systems supporting new models of procedures is at a satisfactory level. It can be said that the prevailing assessment of the majority of participants is that the system is already functioning better than before this reform.

System performance, on the other hand, is not optimal. Shortcomings in system performance can be divided into two groups: one is the shortcomings resulting from the non-implementation, or inadequate implementation, of the provisions of the law. Here, first of all, we have in mind the incomplete functioning of the one-stop shop system, which is reflected in the fact that the filing of tax returns in connection with real estate transactions is most often done without public notaries as ex-officio deliveries, which was not the intention of the legislator.

The second segment of suboptimal functioning of the real estate cadastre registration procedure is about issues that were not even the subject of the May 2018 legislative reform.

This refers to the issues of transactions of non-registered real estate, holding status, inclusion of residence change registration in one-stop shop system of real estate transactions, etc. The subject of this report are both segments in which the functioning of the system could be improved. This is why this report does not advocate reform, but rather an evolutionary upgrade of the system, which we believe has shown the ability to simultaneously improve the efficiency of real estate cadastre registration and the legal certainty of participants in the process.

If there are radical points in this document, then the basic one would be the recommendation to implement the improvements in the form of a legislative package that would cover 12 laws and followed by amendments to four by-laws, and then addenda to the rules of procedure, instructions and other documents supporting the functioning of the real estate cadastre registration system. This would send a strong signal about the government's willingness to do whatever it takes to ensure full implementation of the reform as prescribed by law less than eight months ago.

This document was prepared by NALED's expert team with support of PwC Serbia within the implementation of the UK Good Governance Fund project. As part of the research process, NALED's team consulted representatives of a number of ministries and other government agencies, including representatives of the Ministry of Justice, Ministry of Construction, Transport and Infrastructure, Ministry of Finance, Republic Geodetic Authority, Tax Office, Office of Information Technology and eGovernment, as well as representatives of the chambers of public notaries, barristers and public enforcement agencies, local government units, real estate agents and other bodies and organizations. While preparing this report, the team of co-authors also relied on discoveries of hundreds of trainees of the real estate cadastre registration trainings organized by NALED, which included employees of real estate cadastre services and tax authorities, public notaries, public enforcement agencies, barristers, information technology professionals, etc. We owe gratitude to all participants of consultations for their willingness to share with the NALED team their practical discoveries and consider suggestions for improving the functioning of the system.



## 1. Law on Real Estate and Utilities Cadastre Registration Procedure

### 1.1 Registration of Rights to Land with Existing Buildings

**Recommendation:** Bind the Cadastre Service to perform, no later than September 1, 2020 and without issuing a decision on individual registrations, an ex officio registration of ownership or co-ownership rights to cadastre lots for the benefit of owners of buildings, or separate parts of buildings registered in the cadastre, in line with responsibilities set in Article 7, paragraph 2. of the Law on Real Estate and Utilities Cadastre Registration Procedure, as well as Article 102 of the Law on Planning and Construction. The registration should read as follows: “The owner of the cadastre lot shall be the owner of the building registered on the lot, and if the lot is registered with building or buildings owned, or co-owned, by different persons or the building consists of separate parts of the building owned by several different persons, co-owners of the lot shall be all those persons with the ownership shares in proportion to the area they own against total area of the building, and/or buildings registered on the subject lot“ (recommended formulation of amendments). Also, no alteration of the rights on the lot itself may be allowed as per document adopted after the entry into force of the free conversion provision from Article 102 of the Law on Planning and Construction, without first registering the rights acquired by free conversion.

**Explanation:** RGA, i.e. the Cadastre Service does not act in accordance with Art. 102 and 104 of the Law on Planning and Construction, although the provisions on conversion of the right of use into the ownership of construction land without compensation came into force at the end of 2014. Such treatment complicates the state of cadastre registration, since in the meantime the buildings on that land-lots are being transacted, and the contracts do not indicate that a proportionate transfer of rights to the land is made in addition to separate parts of real estate, since some public notaries will not notarize contracts containing such provisions, although such a stance is contrary to Article 106 of the Law, prescribing the obligation to establish unity of real estate. Sometimes, the sellers oppose such provisions, especially when it comes to developers of the buildings under construction, whose interest is to retain the rights to land or consign rights only to some buyers, as a rule, to the buyers of the business premises on the ground floor of the building or the buyers of a parking space in the courtyard of the building.

The proposed solution will allow the Cadastre Services to conduct ex officio uniform registration on cadastre lots, which are construction land. The public prosecutor in charge

should be given a reasonable time to refute specific registrations, both with regard to the right to free conversion and the possibility of conversion of the entire lot, and to interested persons if they consider that such registration would jeopardize their rights. It is possible to set a longer deadline for filing an appeal, which should be weighed in consultation with the Public Prosecutor's Office. Also, timely submission of documentation to the Public Prosecutor's Office should be secured by the LGU, RGA, Privatization Agency, line ministries and other holders of public powers which have evidence that in relation to certain lots a conversion should be carried out with compensation or that part of the parcel should be separated prior to the conversion as it may be the subject of free conversion, as land for regular use of the building. Provision may also be made that the Public Prosecutor and third parties with an interest in subject matter (for example, persons exercising the right to restitution, etc.) may, within the next 10 years from the date of registration, file a lawsuit against unjust enrichment in connection to the part where a right to free conversion did not exist (acquisition without legal basis, Article 211 of the Law on Torts and Contracts).

**Proposed text to amend the law:**

*Article 61 of the Law on Real Estate and Utilities Cadastre Registration Procedure, will include new paragraphs 10-15, to read:*

*"Registration of ownership rights or co-ownership rights to built up cadastre lots for the benefit of the owners of buildings, or separate parts of buildings registered in the cadastre, in accordance with the law governing the acquisition of rights to construction land (Article 7, paragraph 2 of this Law), shall be executed ex officio by the Cadastre Service in the cadastre, no later than September 1, 2020, without issuing decisions on individual registrations.*

*Registration from paragraph 10 of this article should read as follows: "The owner of the cadastre lot shall be the owner of the building registered on the lot, and if the lot is registered with building or buildings owned, or co-owned, by different persons or the building consists of separate parts of the building owned by several different persons, co-owners of the lot shall be all those persons with the ownership shares in proportion to the area they own against total area of the building, and/or buildings registered on the subject lot".*

*The registration referred to in paragraph 10 of this Article will have no impact on the procedure of legalization of the building on that lot, conducted in accordance with the provisions of the law governing the procedure of legalization, as well as on the procedure of construction of buildings as per the construction permit issued prior to that registration.*

*The Republic Property Directorate of the Republic of Serbia, the ministry in charge of economic affairs, the Privatization Agency and the competent bodies of local government units shall submit to the Public Prosecutor's Office, by May 31, 2020 at the latest, a list of lots and documentation in their possession, proving that the owners of buildings on those*

*particular lots, or parts of those lots, where the state ownership right is registered, shall not be entitled to convert the right of use to the ownership right without compensation, in accordance with Article 102 of the Law on Planning and Construction, for the purpose of filing an appeal related to registration.*

*By way of derogation from Article 42, paragraph 1 of this Law, the Public Prosecutor and other entities that can prove a legal interest in challenging the registration referred to in paragraph 10 of this Article may file an appeal against registration on a particular lot within 90 days from the expiry of the deadline referred to in paragraph 10 of this Article, i.e., may initiate court proceedings to prove that there was no right to ownership right acquisition without compensation in respect of that lot or part thereof. Otherwise, the general provisions of this Law shall apply to appeal proceedings, as well as to the right to proceedings of administrative dispute with respect to the registration referred to in paragraph 10 of this Article.*

*In cases where on the lot for which the registration is being executed in accordance with paragraph 11 of this Article, the person registered is not the owner of the buildings registered on that plot or "an unknown holder" is registered, along with the registration in accordance with paragraph 11 of this Article, the Cadastre Service shall delete subject registration ex officio. After the registration executed in accordance with paragraph 11 of this Article, the Cadastre Service shall, at the request of the subject person, register the ownership rights to that cadastre lot of that person, if he/she is the sole owner of the building, i.e. all buildings registered on that cadastre lot. If the building is registered on the cadastre lot co-owned by several persons or that lot has several buildings owned or co-owned by different persons, the Cadastre Service shall act upon request and register subject persons solely on the basis of the document ascertaining their ownership shares.*

*In the case of undeveloped construction land, the registration of ownership rights to the land shall be carried out by the Cadastre Service at the request of the interested party.*

*If the Cadastre Service has received the document prior to the implementation of the registration of ownership rights to the cadastre lot in accordance with paragraph 10 of this Article, or a request for registration of ownership rights to that lot with different legal basis has been submitted, which occurred after the provision of Article 102 of the Law on Planning and Construction came into force, which prescribes the right to convert the right of use of construction land into the right of ownership without compensation, following the principle of precedence, the Cadastre Service shall first execute registration in accordance with paragraph 10 of this Article, and only then will decide on such submission and/or request. "*

**Other proposals:**

*The Ministry in charge of construction should issue precise guidance regarding the method of ownership rights registration in accordance with Art. 102 and 104 of the Law on Planning and Construction and proposed amendments to the Law on Real Estate and Utilities Cadastre Registration Procedure.*

*It may be that such guidance will be sufficient to resolve this issue, but we would like to draw attention to the fact that only law can prescribe extended deadlines for such registrations to be contested.*

## **1.2 Acquisition of Marital Property on the Basis of a Life Care Contract Made out to Only One Spouse**

**Recommendation:** Amend Article 7 of the Law on Real Estate and Utilities Cadastre Registration Procedure by stipulating that the marital property of the spouses shall not be registered in the cadastre on the basis of a life care contract made out to only one spouse.

**Explanation:**

We propose an amendment to the law, given that the personal characteristics of the care provider are crucial for the care recipient to opt for contract signing. The aleatory feature of this contract supports its exclusion from the marital property regime. Namely, additional person as the care provider cannot be imposed to the care recipient, since during the contract he/she should receive services and attention from that person, which are the most common form of care provider's obligations. Also, from the moment of contract signing, it may be the case that the care provider is in multiple marital and non-marital relationships, which would further complicate this relationship. Additionally, in the event of termination of the contract due to failure to exercise contractual obligations, litigation regarding the fulfillment of termination conditions would be further complicated, as well as in terms of who owes to whom. Having in mind all of the above, it is unacceptable to have the feature of the care provider automatically extended to the spouse. Naturally, this does not affect the rights of the spouses to mutually present contractual requirements on this basis.

**Proposed text to amend the law:**

*In Article 7, paragraph 7 of the Law on Real Estate and Utilities Cadastre Registration Procedure, after the words: "unencumbered legal transaction" add a comma and the words: "as well as in case of acquisition as per the life care contract".*

### 1.3 Pre-registration of Transfer of Rights to the Building Under Construction

**Recommendation:** Amend the Law on Real Estate and Utilities Cadastre Registration Procedure by prescribing with more details the possibility of disposing separate parts of buildings under construction via sales contracts that do not include the intabulandi clause, i.e. via contracts stipulating the deferred payment of the purchase price, that is, specify the conditions for pre-registration of buildings under construction and justification for such pre-registrations.

**Explanation:** This is necessary in order to eliminate the concerns regarding the possibility of disposing buildings under construction when the payment of the purchase price is deferred, which is usually the case for the sale of buildings under construction.

**Proposed text to amend the law:**

*In the Law on Real Estate and Utilities Cadastre Registration Procedure, Article 12, Paragraph 4 is amended to read:*

*"Registered pre-registrations of a building or special parts of buildings under construction in the real estate cadastre shall be translated to the registration of a building based on a valid occupancy permit, and the pre-registrations of the ownership rights for the benefit of the developer of the building under construction, or of the buyer of that building or separate parts of that building, registered in accordance with Article 11, paragraph 4 of this Law, shall be translated to the ownership right if all other conditions for acquiring the ownership right prescribed by law have been fulfilled. "*

*In Article 12, after paragraph 4, a new paragraph 5 is added to read as follows:*

*"The pre-registration of the transfer of rights to a building under construction, or a separate part of the building under construction referred to in Article 11, paragraph 4 of this Law may also be executed on the basis of a contract that does not contain unconditional consent for registration of rights in the real estate cadastre, in which case the subsequent issuance of that consent is an additional prerequisite for translation of that pre-registration into the registration of rights."*

### 1.4 Annotations: Registration Basis; Deleting of Annotations; Annotation of the Confiscation of Property Originating from Crime; and Annotation of the Demolition Permit

**Recommendation:**

- 1) Specify the provisions of Article 15 of the Law on Real Estate and Utilities Cadastre Registration Procedure related to when registrations and deleting of annotations are performed ex officio, and when based on request;
- 2) With regard to the annotation referred to in Article 15, paragraph 1, item 14) of this Law, we propose to specify that such annotation should also be registered in relation to all documents submitted in order to prove legal continuity with the status of cadastre registration, so that in practice it wouldn't be interpreted that the annotation is performed only in relation to the last untimely delivered document;
- 3) With respect to the annotation referred to in Article 15, paragraph 1, item 16) of this Law, we propose that it should be deleted ex officio after the expiration of a period of three years from the date of registration;
- 4) Prescribe a new annotation - annotation of the court decision on temporary or permanent confiscation of property, made in accordance with the law governing confiscation of property originating from a felony;
- 5) Prescribe a new annotation - annotation of the decision by the competent authority to remove the building or part of the building, because this information is of interest to third parties.

**Explanation:** Applicable provisions of Article 15 of the Law are not precise as to when registrations and deletions are performed, so we suggest that provisions that prescribe subject actions should be specified in a manner suggested below. Training participants pointed out the need for more precise definitions of when registrations and deleting of annotations are made ex officio, and when based on request.

Also, it is difficult to delete the annotations under Article 15, paragraph 1, item 16) of this Law if the court registers, where the documents that served as a basis for cadastre registration were recorded by September 1, 2014, are lost or destroyed. RGA pointed to this problem, and during the amendments to the Law, the Constitutional Affairs and Legislation Committee of the National Assembly also pointed to this problem.

The ex officio deletion of the annotation referred to in Article 15, paragraph 1, item 16) of this Law, after the expiration of the three-year deadline, is proposed following the stance that the three-year period is sufficiently long for a person having an interest in disputing such disposition (proving that the contract is forged or for other reasons null and void) to get the knowledge of the document, initiate the procedure for annulment and make cadastre annotation of initiation of a dispute. We would like to remind you that the purpose of this annotation is to inform third parties that it is possible that the registration was made on the basis of a forged contract, given the fact that some registers and registration seals have disappeared from the courts and that counterfeited contracts notarized under the numbers from subject registers have emerged.

New annotation - annotation of the decision by the competent authority to remove the building or part of the building is proposed because this information is of interest to conscientious third parties that needs to be registered in the cadastre.

New annotation - annotation of the court decision on temporary or permanent confiscation of property, made in accordance with the law governing confiscation of property originating from a felony, is proposed because this information is of interest to conscientious third parties that needs to be registered in the cadastre.

**Proposed text to amend the law:**

*In Article 15, paragraph 1 of the Law on Real Estate and Utilities Cadastre Registration Procedure, will include new items 17) and 18) to read as follows:*

*17) annotation of the court decision on temporary or permanent confiscation of property, made in accordance with the law governing confiscation of property originating from a felony;*

*18) annotation of the decision by the competent authority to remove the building or part of the building; "*

*Previous item 17) becomes item 19).*

*In paragraph 2, after the wording: "the annotation is made", comma and wording: "and deleted at the request of the party that provides a proof that the dispute whereby the annotation was made has been validly terminated" shall be added.*

*New paragraphs 3 and 4 are added to read:*

*"Annotation referred to in paragraph 1, item 13) of this Article shall be registered at the request of the party, on the basis of a valid construction permit issued by the competent authority, and shall be deleted ex officio together with the pre-registration of the building under construction on the basis of that construction permit or at the request of the person subject permit is made out to.*

*Annotations from paragraph 1, items 1), 2), 9), 10), 11), 12), 14) 16), 17) and 18) of this Article shall be registered ex officio, and the annotations from paragraph 1, items 4), 6), 7), 8) and 19) shall be registered ex officio as well as at the request of the party. Annotation from paragraph 1, item 15) of this Article shall be registered at the request of the party. "*

*Previous paragraph 3 becomes paragraph 5.*

*In the previous paragraph 4, which becomes paragraph 6, after the wording: "cadastre registration completed." add the wording: "Annotation referred to in paragraph 1, item 14)*

*shall be registered in relation to the documents submitted in order to prove legal continuity with the status of registration in the cadastre. "*

*In the previous paragraph 5, which becomes paragraph 7, after the wording: "defect of the subject contract", comma and the wording: "and this annotation shall in any case be deleted ex officio after the expiry of a three-year period from registration" shall be added.*

*New paragraphs 8 and 9 are added to read:*

*"Annotations from paragraph 1, items 1) and 2) of this Article shall be deleted ex officio, and the annotations referred to in paragraph 1, items 4), 6), 7), 8), 9), 10), 11) and 12) of this Article at the request of the party providing a proof that the legal basis for the subject annotation has ceased to exist, as well as ex officio upon delivery of the document serving as the basis for deletion by the ex officio deliverer. Annotation referred to in paragraph 1, item 15) of this Article shall be deleted at the request of the party providing a proof that the legal basis for the subject registration has ceased to exist, as well as at the request of the person for whose benefit subject registration was made.*

*Annotation referred to in paragraph 1, item 18) shall be registered upon the adoption and delivery of the decision by the competent body of the local government unit, i.e. building inspector, and shall be deleted ex officio or at the request of the party, if such decision has been declared null and void or together with deletion from the cadastre of the building subject decision was made for. Finality of the decision is not a condition for registration of this annotation. "*

*In the previous paragraph 6, which becomes paragraph 10, after the wording: "from the real estate cadastre" add the wording: "ex officio,".*

## **1.5 Proceedings with a Notarized Founding Act, by Which Real Estate is Added to the Capital of a Legal Entity**

**Recommendation:** By amending Article 22 of the Law on Real Estate and Utilities Cadastre Registration Procedure prescribe that the notary shall not be ex officio deliverer of a notarized founding act, nor any acts of status changes by which real estate is added to the capital of a legal entity.

**Explanation:** By means of a founding act, real estate can be added to share capital of a legal entity, first of all, a business entity. However, without the registration of the subject legal entity in the status register, neither this legal entity has been created nor the founding act has been implemented. Therefore, the founding act itself is not a document eligible for cadastre. The situation is similar with the status changes, which can be challenged by



creditors and shareholders. For the aforementioned reasons, public notaries should be released from this obligation or it should be stipulated that this document should be submitted to the cadastre only after the registration of the newly established legal entity, i.e. status changes in the status register.

**Proposed text to amend the law:**

*In Article 22 of the Law on Real Estate and Utilities Cadastre Registration Procedure, add a new paragraph 6, to read as follows:*

*“Exceptionally from items 1 and 2 of this Article, a public notary shall not be obliged to submit the founding acts and acts on status changes used to dispose the rights to real estate. ”*

*Previous paragraph 6 becomes paragraph 7.*

## **1.6 Status of Possession Registration**

**Recommendation:** Determine the status of possession registration by setting that possession becomes a ownership ex officio on the basis of positive prescription, depending on the specific situation of possession registration, including the annotation of illegally built structure.

**Explanation:** According to the present determination from Article 58 of the Law on Real Estate and Utilities Cadastre Registration Procedure, possession registered by virtue of 2009 Law on State Survey and Cadastre, which came into force on September 11, 2009, which was considered legal and conscientious under that law, should be deleted if, by May 1, 2028, the legal conditions for “conversion” into ownership are not met. In addition, current Article 58 did not predict who would be registered after deletion of possession and holder, so the norm remained incomplete. The conclusion would be that this norm should in fact encourage registered holders to fulfill the legal requirements for conversion of their possession into ownership, and that if this fails, the deadline (May 1, 2028) can be expected to be extended further, because otherwise there would be real estate that "belongs to no one". Therefore, a solution has been offered to eliminate this problem by automatically recognizing the ownership of registered holders on the basis of the registration of possession and the lapse of time, unless their possession is challenged by another claimant to ownership acquisition versus the same property. The date of September 11, 2019 was not chosen randomly. This is a day when a ten year period ends from the entry into force of the Law that allowed possession registration into the real estate cadastre, which corresponds to the general deadline for regular positive prescription on real estate (ten years). The remaining time until that date has been left to the ownership claimants of that property to register or file a dispute for

ownership right recognition that can be registered in the real estate cadastre. Also, when it comes to buildings and separate parts of buildings, it has been indicated separately that the ownership registration under this Article does not release the registered owner from the obligation to legalize the building, or the risk that the building will be removed if it is not legalized.

Finally, in order to protect the reliance of third conscientious persons, it has been stipulated that, within the next five years from the date of the ownership registration, an annotation should be registered that the property was created by conversion from the registered possession, in order to signal to the third parties that additional checks may be needed, primarily regarding the legalization of buildings. This annotation would be deleted ex officio after the expiration of five years deadline from the date of ownership registration, i.e. on September 11, 2024.

**Proposed text to amend the law:**

*The heading above Article 58 and Article 58 shall be amended to read:*

*"Deletion of Holder and Possession and Ownership Registration*

*Article 58*

*If, by September 11, 2019 at the latest, another person has not been registered as the ownership right holder on the lot on which, in accordance with the Law on State Survey and Cadastre (Official Gazette of RS, no. 72/09, 18/10, 65/13, 15/15 - CC, 96/15, 47/17 - authentic interpretation and 113/17 - other law), a lot holder has been registered, on September 12, 2019, the Service will register the ownership right on that lot ex officio for the benefit of the registered lot holder, while deleting the capacity of holder and possession for that person.*

*If, by September 11, 2019 at the latest, another person has not been registered as the ownership right holder on the building on which, in accordance with the Law on State Survey and Cadastre (Official Gazette of RS, no. 72/09, 18/10, 65/13, 15/15 - CC, 96/15, 47/17 - authentic interpretation and 113/17 - other law), a building holder has been registered, on September 12, 2019, the Service will register the ownership right on that building ex officio for the benefit of the registered building holder, while deleting the capacity of holder and possession for that person.*

*The registration of ownership right provided for in paragraph 2 of this Article shall also not be exercised if the person registered as the owner of land on which the building was built register a dispute in the real estate register no later than September 11, 2019, by virtue which he/she requested demolition of the subject building or determination of hi/her ownership right to the building.*

*Registration of the ownership right provided for in item 2 of this Article shall not affect the legality of the building, or the legal consequences of the legalization inapplicability, in accordance with the law governing legalization.*

*If, by September 11, 2019 at the latest, another person has not been registered as the ownership right holder of the separate part of the building on which, in accordance with the Law on State Survey and Cadastre (Official Gazette of RS, no. 72/09, 18/10, 65/13, 15/15 - CC, 96/15, 47/17 - authentic interpretation and 113/17 - other law), a separate part holder has been registered, on September 12, 2019, the Service will register the ownership right on that separate part ex officio for the benefit of the registered separate part holder, while deleting the capacity of holder and possession for that person.*

*Registration of the ownership right set for in Paragraph 5 of this Article shall not affect the legality of the building, or the legal consequences of the legalization inapplicability, in accordance with the law governing legalization.*

*Simultaneously with the registration of ownership in accordance with paragraphs 1, 2 and 5 of this Article, for the purpose of warning third parties, annotation shall be registered in the cadastre, without a special decision, that the ownership has been registered by converting the registered possession into ownership, and it shall be deleted ex officio on September 11, 2024, and then all subject registrations shall be equal to all other ownership registrations in the real estate cadastre. "*

## **1.7 Ex Officio Deliveries of all Documents Serving as the Basis of Registering a Change in the Cadastre**

**Recommendation.** Article 22 of the Law on Real Estate and Utilities Cadastre Registration Procedure should define the obligation to deliver all documents that are documents for cadastre registration. Although we believe that this obligation has been unambiguously laid down in Article 22 of the Law, we here suggest to further specify this provision, for the purpose of consistent and proper implementation in practice.

**Explanation.** The practice of applying new regulations in the field of real estate cadastre registration has shown that ex officio deliverers do not submit to the Cadastre Service all the documents that serve as basis for cadastre registration.

Suggested solution will eliminate current practice where some public notaries do not deliver registration documents to the Cadastre Service, which include annexes to contracts and consents for registration of rights in the real estate cadastre. This will also reduce the risk of

courts which obligation to deliver shall occur as of January 1, 2020, failing to deliver decisions on temporary freezing injunction.

It is in the public interest to ensure full and effective implementation of ex officio registration in the cadastre.

**Proposed text to amend the law:**

*In Article 22 of the Law on Real Estate and Utilities Cadastre Registration Procedure, add a new paragraph 7, to read as follows:*

*"The document referred to in paragraph 1, item 1) of this Article shall also be a temporary freezing injunction related to transfer and encumbrance of the real estate, and the document referred to in paragraph 1, item 2) of this Article shall also be an annex to the contract transferring the real estate ownership, as well as a consent for registration of rights in the real estate cadastre. "*

## **1.8 Delivery of Documents Proving Legal Continuity for Registration of the Change in the Cadastre and Effects of Such Delivery**

Recommendation. In Article 32 of the Law on Real Estate and Utilities Cadastre Registration Procedure, specify the obligation of ex officio deliverer to deliver, in addition to the document he/she has produced, the documents proving the legal continuity necessary for registering the change in the cadastre, as well as the effect of delivery of the subject earlier documents. Although we believe that this obligation and its effects have been unambiguously laid down Article 23, paragraph 2 of the Law, we here suggest to further specify this provision, for the purpose of consistent and proper implementation in practice.

**Explanation.** The practice of applying the new regulations in the field of real estate cadastre registration has shown that public notaries, as a rule, insist that the real estate seller, prior to the solemnization of the sales contract, registers his/her ownership of the real estate in the cadastre. This is less the case when it comes to conducting probate proceedings, in which case the inheritance decision is not submitted to the Cadastre Service for registration of inherited real estate in the cadastre. Such conduct indicates that public notaries avoid taking the risk of confirming the "eligibility" for cadastre registration of earlier documents that they did not produce themselves, which significantly impairs the cadastre's timeliness and slows down real estate transactions. From communication with the Chamber of Public Notaries we have concluded that the main reason for such conduct of public notaries in practice is the unclear stipulation of the public notary's responsibility regarding the boundaries of verification of the subject documents. Namely, it was stated that public notaries cannot and

do not want to guarantee that these documents are legal, because they did not participate in their production. In other words, public notaries do not want to take the risk of liability in the event of the cancellation of such documents due to forgery, defect of consent, etc.

We would like to remind that one of the goals of the cadastre reform was to ensure that the register is up-to-date, which is accomplished through the ex officio registration upon delivery of documents by those that produce them (public notaries, courts). Also, the goal was to ensure the efficiency of registration based on these documents and legal certainty for the parties, which is why the verification of documents for registration of change in the cadastre was transferred from the Cadastre Service to the ex officio deliverer, which completely formalized the role of the Cadastre Service at the time of registration. This goal can only be achieved in practice if public notaries accept to evaluate the documents proving continuity for registration upon their application. This would solve a number of cases in which the Cadastre Services are groundlessly challenging registration based on old documents, and it would also reduce the number of cases before the Cadastre Services and accelerate the establishment of an up-to-date real estate cadastre.

Logic imposes the following question: What is it that can be checked by the Cadastre Office in relation to these old documents the notary can not do on his/her own? The Cadastre Service also did not produce the subject document, and we think that public notaries will agree that the employees of the cadastre services are certainly not more competent to assess the "eligibility" of old documents for cadastre than themselves.

This issue has already been discussed at the round table, which was held in connection with an earlier version of this analysis in the Palace of Serbia on April 12, 2019, and in agreement with public notaries a posture has been adopted that public notaries may evaluate the legality of documents in solemnization of the real estate transaction contract or implementation of probate proceedings within the following boundaries:

- In relation to the document they solemnized and/or order of probate they issue, the public notaries will evaluate the eligibility for cadastre registration under that document (contract), as well as the legality of the legal transaction itself. This is the reason why they were made responsible for notarization, i.e. solemnization (to increase security regarding the enjoyment and disposal of real estate);
- In relation to documents that they have not produced, but which determine the continuity of ownership rights (previous contracts and orders of probate, if filled to prove continuity), public notaries should evaluate the legality of that transaction, only to the extent that it was previously done by the Cadastre Service. So the public notary here should only evaluate the eligibility of those cadastre registration

documents, i.e. the admissibility of legal transaction under these documents and fulfillment of the legal form for that document.

We believe that it is necessary for the public notaries to begin to perform this role as soon as possible, as otherwise the problem of unimplemented registrations under the old “documents” will only be further complicated. Of course, there are also cases where the eligibility of old cadastre documents is disputable. In this case, it is logical that the public notary cannot determine the eligibility for registration in the cadastre under the old document, and then he/she should refuse to produce a document that would be the basis for registration of the change as regards to the subject real estate.

The proposed solution will allow public notaries to determine the eligibility of previous documents within the boundaries within which the cadastre did that previously, thereby reducing the work of the Cadastre Services and accelerating the updating of the cadastre.

**Proposed text to amend the law:**

*In Article 32 of this Law, add new paragraph 4 to read as follows:*

*“In case of delivery of a document proving continuity in accordance with Article 23, paragraph 2 of this Law, it shall be considered that the ex officio deliverer by the act of delivering that document has confirmed the eligibility for registration in the cadastre and on the basis of that document, i.e. the admissibility of legal transaction under that document and fulfillment of the legal form for that document. ”*

*Previous items 4-8 become items 5-9.*

## **1.9 Delivery of a Document Relating to Disposal of Unregistered Real Estate**

**Recommendation:** In the Law on Real Estate and Utilities Cadastre Registration Procedure, delete the provision on the obligation of public notaries to deliver documents pertaining to the disposal of real estate not registered in the real estate cadastre.

**Explanation:** As one of the key recommendations of this report is to amend the Law on Real Estate Transactions and condition the transactions with unregistered real estate with their previous registration, it is proposed that the Law on Real Estate and Utilities Cadastre Registration Procedure should be subject to deletion of the provision on the delivery of documents for disposal of real estate not registered in cadastre, that is, real estate under

construction that have not been pre-registered in the cadastre. Namely, the posture here is that public notaries should not notarize contracts that implement transfers that cannot be registered in the cadastre, since in the meantime, the transactions with buildings constructed without a building permit and buildings in the process of legalization has been prohibited. Proposal to prohibit transactions with buildings under construction, which have not been pre-registered in the cadastre goes along the same line.

One should also have in mind that the cadastre services do not comply with the obligation referred to in Article 22, paragraph 2, item 3) of the Law, which prescribes delivery of such documents solely for recording purposes, in order to prevent double sales, because the contracts that public notaries provide them for recording purposes are not recorded in a separate transactions record, but use them solely for the purpose of recording the prices from the contracts serving to mass appraisal of real estate.

**Proposed text to amend the law:**

*Article 22, paragraph 2, item 3) of the Law on Real Estate and Utilities Cadastre Registration Procedure is to be deleted.*

## **1.10 Procedures for Documents Related to Many Real Estate Units**

**Recommendation:** In Article 22 of the Law on Real Estate and Utilities Cadastre Registration Procedure define that when delivering a document transferring the rights to more than one real estate units, ex officio deliverer should indicate for which real estate unit that document is an eligible basis for registration.

**Explanation:** Whereas Article 1 of the Law on Inheritance stipulated that all inheritance eligible rights that belonged to the testator at the time of death are inheritance, it is evident that order of probate, as well as hereditary legal contracts, serving as the basis for registration of rights in the cadastre, may include rights that are not eligible for registration. Also, real estate transfer contracts often transfer rights to more than one real estate unit. This amendment to the Law was proposed to stipulate that the ex officio deliverer is obliged to indicate, upon delivery of the document for cadastre registration, the eligibility for registration of that document in relation to the specific real estate transfer of which is covered by that document.

**Proposed text to amend the law:**

*In Article 22 of the Law on Real Estate and Utilities Cadastre Registration Procedure, add a new paragraph 3, to read as follows:*

*"If the document referred to in paragraph 1 of this Article transfers the right to more than one real estate unit, ex officio deliverer shall indicate for which real estate units the document is an eligible basis for registration in the real estate cadastre."*

*Previous items 3-5 become items 4-6.*

### **1.11 Cadastre Service Procedure for Documents with Incomplete Information**

**Recommendation:** Amendments to the Law on Real Estate and Utilities Registration Procedure to define the procedure for ex officio deliverers and the Cadastre Service in case of incompleteness of information registered in the cadastre or incompleteness of information in the cadastre registration document.

We propose that the ex officio deliverer should be obliged to include in the document the information on how he/she has identified the identity of the person from whom the rights are being transferred by the document, if all the prescribed information referred to in Article 22, paragraph 7 of the Law have not been registered in the cadastre .

We propose that the Cadastre Service should conduct registration based on the document which does not contain all the information on the person who is the acquirer, if other formal conditions for registration of change in the cadastre are fulfilled, but will inform the body in charge supervising the work of that ex officio deliverer about that fact. Registration of the remaining information referred to in Article 22, paragraph 7 of the law shall be conducted on the basis of an annex, i.e. an addenda to that document or a court decision ordering an addenda to the subject registration.

**Explanation:** The recommendation was made for the purpose of specifying the actions of the Cadastre Service when the complete information on transferors and acquirers has not been entered in the document. Namely, the Cadastre Service has been facing the practice of ex officio deliverers not entering in the document all information referred to in Article 22, paragraph 6 of the law on the persons to whom the document refers to, and in particular the unique identifier, name of the parent or address, and registration on the basis of that document may create confusion about the identity of the persons to whom the registration refers to. Please note that the current position of the Cadastre Services is to terminate the procedure in this case. Such practice may lead to the liability of the ex officio deliverer (public notary, court, etc.) for the damage caused by the incomplete information entered in the document and registration procedure termination for that specific reason, and after that the registration was made on the basis subsequently delivered request or delivery on another basis. It is quite clear that such a practice would lead to numerous claims of damages against the state, especially in the case of termination of the procedure upon delivery of rulings and



injunctions. Thus, this amendment to the Law should be adopted as soon as possible and no later than by January 1, 2020, when the ex officio delivery obligation for courts shall enter into force.

In practice, the acquirer may subsequently obtain an annex to the contract or an additional decision of the ex officio deliverer, and in the extreme case, a court decision ordering the Cadastre Service to supplement the registration with missing information on the acquirer.

Also, it should be noted that in many cases the cadastre does not contain all the information on the rights holders referred to in Article 22, paragraph 6 of the Law, when the Cadastre Service also does not have to terminate the procedure or refuse to register the change, if the identity of the registered person and the person being the transferor has been established by the ex officio deliverer in the process of producing the document. It is unacceptable to condition the registration on the basis of order of probate by mandatory indication of the unique identifier of the testator, especially given that orders of probate are often related to persons who died decades ago.

**Proposed text to amend the law:**

*In Article 22 of the Law on Real Estate and Utilities Cadastre Registration Procedure, after Paragraph 7 (numbering of paragraphs applicable if the previous recommendation is accepted) add new paragraph 8 to read as follows:*

*"If the cadastre does not contain all the information referred to in Article 22, paragraph 7 of this Law on the person from whom the rights are transferred on the basis of the document, the ex officio deliverer shall be obliged to include in the document the information on how he/she has identified the identity of that person versus the person registered in the cadastre."*

*Article 34 of the Law to include a new paragraph 3 to read as follows:*

*"If the registration document does not contain all the information referred to in Article 22, paragraph 7 of this Law on the person or persons who are acquiring the rights, while other formal requirements for registration in the cadastre are fulfilled, the Cadastre Service shall conduct the registration on the basis of that document, but this fact will be reported to the body in charge of supervising the work of that ex officio deliverer. Registration of remaining information referred to in Article 22, paragraph 7 of this Law shall be made on the basis of an annex, i.e. an addenda of that document or the court decision ordering the supplement of this registration. "*

## 1.12 Visibility of Information on the Change Decided upon Delivery and/or Application

**Recommendation:** RGA should ensure the availability of information on the change the delivery relates to, or the application upon which no decision has been made, namely: information on the type of change and the real estate, or the separate part of the real estate that change applies to.

**Explanation:** It is in the public interest to ensure the visibility of the initiated changes in the real estate cadastre. When recording the delivery or application in the real estate cadastre, it is not clear what the delivery or application relates to until the moment of registration. This drawback has a particularly negative effect in case of buildings with separate parts (residential buildings with apartments), since no data are available on which particular part of the real estate the annotation or application refers to. Therefore, interested parties are compelled to obtain special certificates from the RGA on what the annotations are about. This situation slows down real estate transactions and complicates the solemnization procedure for real estate transactions.

**Proposed text to amend the law:**

*In the Law on Real Estate and Utilities Registration Procedure, in Article 15 paragraph 1, item 1) after the words: "by Article 25 of this Law" add a comma and the wording: "stating the type of change and real estate, and/or a separate part of real estate that change applies to."*

## 1.13 Registration in the Cadastre after the Adoption, Instead of Upon the Finality of the Decision

**Recommendation:** We propose to amend the Law by stipulating that even after 2021, the cadastre registration will be implemented upon adoption and not upon the finality of the decision.

**Explanation:** Although the Law on Real Estate and Utilities Registration Procedure defined that the cadastre registration should be done only after the finality of the decision, as this is the usual solution regarding the enforcement of administrative acts, as well as to avoid confusion regarding the acquisition of rights, attention was drawn to the fact that the old solution, which is still being applied, is more operational and that it is comparatively legally accepted.

**Proposed text to amend the law:**

*In Article 15, paragraph 1, add item 1a) to read:*

*„1a) the annotation that the first instance decision is not final unless it is a decision in an administrative matter subject of which is the annotation of dispute; "*

*In Article 15, a new paragraph 11 is added (if amendment 1.3 is accepted) to read as follows:*

*"The annotation referred to in paragraph 1, item 1a of this Article shall be registered and deleted ex officio without rendering a decision. "*

*Article 41 of the Law on Real Estate and Utilities Cadastre Registration Procedure, Paragraph 1 is amended to read:*

*"The registration in the real estate cadastre shall be effected without delay as soon as the registration decision has been adopted. "*

*The article on the procedure for registration in the real estate and utilities cadastre is amended to read:*

*"Upon adoption of the decision on registration, the registration will be made under that decision, with simultaneous registration of annotation that the decision by which that registration was made is not final. "*

*In Article 61 of the Law on Real Estate and Utilities Cadastre Registration Procedure, Paragraph 6 is deleted.*

## **1.14 Delivery to the Party Concerned and to the Notary Office of the Cadastre Service**

**Recommendation:** We propose that amendments to the Law on Real Estate and Utilities Registration Procedure make it indisputable that the delivery to the parties concerned can also be made by personal delivery in the notary office of the Cadastre Service.

**Explanation:** Article 39 of the law stipulated that the delivery of a writing or decision is made to the parties by registered mail. Consistent implementation of this practice has led the Cadastre Services to refuse to provide parties with a decision at the notary office, which is why the parties to whom, as a rule, delivery is made during working hours never receive subject decisions that is archived after a failed delivery. After that, RGA refuses to issue the decision to the party, but the party is forced to ask for a copy and pay an additional fee, which makes no sense. A particular problem is that the party is unable to appeal the decision.

**Proposed text to amend the law:**

*In Article 39, Paragraph 2 of the Law after the words: "made electronically." the following word shall be added: "In cases where delivery is by registered mail, the decision may also be taken at the notary office of the line Cadastre Service."*

### **1.15 Implementation of the Law on Real Estate and Utilities Cadastre Registration Procedure with Regard to the Responsibility for Determining the Legality of Disposition and Registration Based on Old Documents**

**Recommendation:** We propose amendments to the Law to make it indisputable that the Law on Real Estate and Utilities Cadastre Registration Procedure with regard to the responsibility for determining the legality of disposition and registration based on documents also applies to old documents if they have been delivered by a public notary to prove legal continuity.

**Explanation:** Due to the need to check older documents to a greater extent than new ones made by public notaries, it has been prescribed that old law shall apply to old documents and new law to the new documents. Such a solution is indisputable, but it is necessary to make it indisputable that the verification of old documents, which are delivered to prove legal continuity, should be done by a public notary who delivers them with the document he/she produced and delivers to the Cadastre Service as the ex officio deliverer.

**Proposed text to amend the law:**

*Article 57 of the Law add new paragraph 6 to read as follows:*

*"By way of derogation from paragraph 2 of this Article, the legality of the documents produced before the entry into force of this Law, delivered by the ex officio deliverers for the purpose of proving legal continuity in relation to the status registered in the cadastre, as well as the lawfulness of the registration on the basis of those documents, shall be verified by the ex officio deliverer, and not the Cadastre Service. "*

## **2. Law on Planning and Construction**

### **2.1 Construction Permitting in Case of Dispute Annotation**

**Recommendation:** Allow construction permitting also for lots with dispute annotations and/or administrative dispute.

**Explanation:** Article 135 of the Law on Planning and Construction prescribed restriction that construction permit shall not be issued if a dispute or administrative dispute has been registered in respect of the property in question. Considering that such a provision, as assessed, opens the door to legal uncertainty and abuse with 'vexatious litigation', it is proposed to rephrase this provision and limit it to situations where a freezing injunction has been imposed.

**Proposed text to amend the law:**

*In Article 135, paragraph 13 of the Law on Planning and Construction, wording: "unless the annotation has been entered after the entry into force of the Law on Real Estate and Utilities Cadastre Registration Procedure ("Official Gazette of RS", No. 41/18)" replace with the wording "and the decision shall refuse to issue a construction permit if a freezing injunction has been imposed in respect of this property. "*

## **2.2 Pre-registration of Buildings Under Construction Immediately after Construction Permitting**

**Recommendation:** Prescribe the obligation of the authority in charge of construction permitting to perform ex officio delivery to the Cadastre Service the real estate documents necessary for pre-registration of buildings under construction after construction permitting. It is possible to limit pre-registration only to the cases when it is done at the request of the developer, that is, to buildings for the market or only to a certain type of buildings.

**Explanation:** According to Article 148, paragraph 3 of the Law on Planning and Construction, the line authority shall deliver ex officio the construction permit and other documents for pre-registration of the building under construction, immediately after the notice of commencement of works. By shifting this obligation to the time of construction permitting, it is achieved that in favor of the developer, the pre-registration of the building under construction is made immediately after obtaining the decision on the construction permit. This also increases legal certainty in the case of transactions with the building, i.e. separate parts of the building under construction, as well as in the case of changes to the decision on the construction permit due to the change of developer, and helps avoid the possibility of illegal multiple transactions of the construction permit.

Also, the purpose of the amendment could be to pre-register the construction of only buildings for market/sale or specific type of buildings (excluding simple buildings). Such solutions would help avoid clogging the real estate cadastre services and developers would not need to pay a pre-registration fee in situations where they have no interest in making such a pre-registration.

**Proposed text to amend the law:**

*In Article 138 of the Law on Planning and Construction, after paragraph 2, a new paragraph 3 is added to read:*

*"If a building for which a construction permit has been issued, or separate parts of that building, are intended for market/resale, immediately after the finality of the decision on the construction permit, the competent authority shall ex officio deliver to the authority in charge of state survey and cadastre that decision and excerpt from of the design with graphic annexes and specification of separate parts for the purpose of pre-registration of that building in the cadastre".*

*Or*

*"The developer shall, prior to the sale of the building or separate parts of the building under construction, ensure a pre-registration of that building, or separate parts of the building, in the cadastre."*

*or*

*"Immediately after the finality of the decision on the construction permit, the competent authority shall ex officio deliver to the authority in charge of state survey and cadastre affairs that decision and an excerpt from the design with graphic annexes and specification of separate parts for the purpose of pre-registration of that building and/or separate parts of that building to the cadastre if that building falls within the category of buildings for which, under this law, contractor engagement (or engagement of professional supervision) is mandatory. "*

*In Article 148, paragraph 3 is deleted.*

### **2.3 Prohibition of Disposal of Buildings Under Construction not Pre-Registered in the Cadastre**

**Recommendation:** We propose to prohibit the disposal of buildings, and/or separate parts of buildings under construction, which have not been registered or pre-registered in the cadastre, construction of which began, or the notification of commencement of works has been executed after December 17, 2014, if the occupation permit for the aforementioned buildings has not been issued by November 8, 2018.

**Explanation:** The overriding goal of pre-registration of buildings, and/or separate parts of buildings under construction, is the protection of conscientious real estate acquirers intended for the market, which is realized by pre-registration of rights, which enables retroactive acquisition, from the moment of the conclusion of the sales contract for the building under

construction. This prevents the collection by subsequent creditors of the developer, which in practice try to collect their receivables immediately after the occupancy permit has been issued for the building that the developer had in its disposal for a long time. This is often a matter of real estate which has been in possession of conscientious buyers for a long time, who did not acquire the ownership right solely because of the case-law that the ownership is acquired by registration in the cadastre, and that until that moment they had only contractual-legal claims to the developer.

However, in practice, the acquisition of the right cannot be pre-registered if the building subject to disposal is not pre-registered first. This is why the public notaries cannot deliver to the cadastre for the purpose of pre-registration a sales contract for a building under construction, if that building has not been pre-registered in the cadastre, and this happens and will continue in future if the competent authority did not deliver ex officio to the Cadastre Service the construction permits and other documentation for the purpose of pre-registration of the building, and/or if the developer did not submit a request for such pre-registration prior to the conclusion of the sales contract. Pragmatically, public notaries cannot guarantee the quality of technical documentation, so they cannot be expected to deliver the documentation necessary for pre-registration of the building with the sales contract.

Having the aforementioned in mind, and above all legal certainty of transactions of the buildings under construction, we propose to prohibit the sale of buildings under construction that were not pre-registered in the cadastre. This is particularly important in view of the possibility of pre-registration of the building immediately after the construction permit has been issued.

Bearing in mind that the provision of Article 148, paragraph 3 of the Law on Planning and Construction, which introduced the obligation to pre-register buildings under construction, effective November 8, 2018, as amended by that law adopted on October 29, 2018, the restriction could only be prescribed for buildings for which up to that time no occupational permit has been issued, otherwise the rights acquired could be challenged. Bearing in mind that the amendments to the Law on Planning and Construction of December 9, 2014 introduced a unified procedure for construction permitting, which introduced higher standards in the construction control, and that in the previous period a large number of buildings for various reasons never got occupancy permits, we accepted the suggestions from the actual practitioners that the restriction should be introduced solely with respect to subsequently constructed buildings.

**Proposed text to amend the law:**

*In Article 138 of the Law on Planning and Construction, after paragraph 2(3), a new paragraph 3(4) is added to read:*

*"It is forbidden to dispose of buildings under construction and separate parts of buildings under construction that are not registered or pre-registered in the cadastre, construction of which started, i.e. the notification of commencement of works was executed after December 17, 2014, if the occupancy permit for the subject buildings has not been issued by November 8, 2018. "*

*If a recommendation to amend the Law on Real Estate Transactions (related to Article 4a) is implemented, consider abandoning this recommendation and deleting it in the law governing construction of a provision prohibiting disposal of buildings without construction permit, i.e. construction approval.*

## **2.4 Pre-registration of the Building Removal Decision (Demolition)**

**Recommendation:** Prescribe the obligation of the LSG, i.e. the line construction inspector, to deliver the building removal decision to the Cadastre Service for annotation.

**Explanation:** If amendments to the Law on Real Estate and Utilities Registration Procedure allow annotation of the building removal decision in the real estate cadastre, third parties, public notaries and potential buyers will have timely information on the planned building removal. In practice, it is not uncommon for a property to be sold to a buyer without the buyer being aware that a demolition decision has been issued for the property. This would ensure data transparency.

**Proposed text to amend the law:**

*In Article 169, a new paragraph 4 is added to the Law on Planning and Construction, to read as follows:*

*"Upon the building removal decision, and/ or its part, the competent authority of the local government unit shall deliver subject decision without delay to the competent Cadastre Service for annotation. "*

*In Article 176, a new paragraph 9 is added to the Law on Planning and Construction, to read as follows:*

*"Upon the adoption of the decision referred to in paragraph 1, item 6) of this Article on the building removal or its part, the construction inspector shall deliver subject decision without delay to the competent Cadastre Service for annotation. "*



### 3. Law on Enforcement and Security

#### 3.1 Abolish the Assumption of Executed Registration of the Enforcement Decision Annotation

**Recommendation:** Abolish the legal presumption from Article 155, paragraph 2 of the Law on Enforcement and Security that it shall be considered that the annotation of the enforcement decision has been executed in the cadastre if the Cadastre Service does not register that annotation within 72 hours from the receipt of the request for registration.

**Explanation:** In practice, this assumption creates a great deal of legal uncertainty regarding cadastre registration, since it grossly violates the principle of priority of processing the requests, i.e. documents. The modern rule of administrative procedure that the silence of the administration means approval is inapplicable in situations where it may affect the rights of third parties, as is the case here. This provision is in direct conflict with Article 31, paragraph 4 of the Law on Real Estate and Utilities Cadastre Registration Procedure, which explicitly stipulates that "the order of decision-making cannot be impaired by a separate law".

Law on Real Estate and Utilities Cadastre Registration Procedure stipulated that the principle of priority in decision making established by this law cannot be violated by another law. Failure to comply with this principle would completely undermine the basic principle underlying the keeping of public books, which is the principle of reliance. Please note that this provision has not been applied in practice yet, as it would lead to legal uncertainty.

**Proposed text to amend the law:**

*In Article 155 of the Law on Enforcement and Security, paragraph 2 is deleted.*

#### 3.2 Deletion of Encumbrance Upon Sale of Real Estate Under Enforcement

**Recommendation:** Prescribe by law that the new owner acquires the real estate without actual encumbrances after the sale of the real estate has been completed, by deleting only those annotations related to ownership rights.

**Explanation:** It is a noticeable practice that in the case of the sale of the real estate under enforcement, the Cadastre Service also deletes those annotations which it should not, such as an annotation of a dispute. The amendment to the Law should define that the sale of real estate under enforcement *brings deletion of only those encumbrances relating to property rights, as well as annotations of disputes and prohibitions of alienation, while annotations*

*relating to the qualification of the real estate (that the property is a cultural property, that the expropriation procedure is underway, etc.) can not be deleted.*

**Proposed text to amend the law:**

*"In Article 193 of the Law on Enforcement and Security, add to paragraph 2 after the wording "not taken by the buyer" a comma and the wording "except for annotations registered in the cadastre solely in relation to the real estate itself (that the real estate is cultural property, that the expropriation procedure is underway, etc.)".*

## **4. Mortgage Law**

### **4.1 Coverage of the Building or Land Mortgage**

**Recommendation.** Prescribe that a building mortgage includes ex lege the land on which the building is erected and vice versa, with the transitional provision that situations where the mortgage is registered in contravention of this rule require the application of the provisions of the Law on Planning and Construction on the designation of land for regular use of buildings and establishment of unity of real estate. It should also be noted that when a mortgage exists on a separate part of building, it cannot exist simultaneously on the building as a whole, and that by the apportioning of the building the building mortgage becomes ex lege joint mortgage on all separate parts. It should not be allowed to mortgage land without building and building without land. By apportioning of the building, the mortgage becomes mortgage on each separate physical part of the building.

**Explanation.** Giving more importance to the principle of unity of real estate requires an intervention in the provisions of the Mortgage Law, namely on the subject of a mortgage, which would clarify that a mortgage on an building includes ex lege the land on which the building was erected and vice versa.

**Proposed text to amend the law:**

*In the Mortgage Law, Article 3, paragraph 1, item 5) is amended to read:*

*"5) the right of construction, the right to lease publicly owned construction land, or other right on land that authorizes a holder who is not the owner of construction land to build a building on that land and, permanently or temporarily, has the right of ownership (mortgage of the landless building), as well as the right to land containing free legal disposition power;"*

*In item 6, after the wording "regulate the construction of buildings" the following wording is added: "and that the building under construction is pre-registered in the real estate cadastre".*

*After paragraph 1, paragraph 2 is added to read as follows:*

*"Built-up construction land may not be a standalone subject of mortgage unless the building on it was built based on the right of construction, lease of publicly owned construction land, or on any other basis that authorizes a person who is not the owner of the construction land to construct the building on that land and on that building, whether permanently or temporarily, has the right of ownership. "*

*In Article 10, after paragraph 1, the following new paragraphs 2 and 3 are added:*

*"Mortgage on unbuilt construction land extends, by the law, to a building being built on that land, if the developer of that building is the owner of that land, and shall be registered ex officio as soon as it is pre-registered as a building under construction, and at the latest when the property is registered as real estate.*

*Mortgage on the construction building extends, by the law, to the land on which the building was built, and registered on that land ex officio at the same time as the mortgage registration on the building, unless the building was built on the basis of the right of construction, lease of construction land in public property or on any other basis which authorizes a person who is not the owner of construction land to construct a building on that land and on that building, permanently or temporarily, has the right of ownership. "*

*In Article 11, paragraphs 1 and 2 shall be amended to read:*

*"The registration of a contractual mortgage shall be made in accordance with the regulation governing the procedure for registration in the real estate register.*

*In the case referred to in Article 3, item 6) of this Law, the registration of the contractual mortgage shall be made by registering mortgage on the pre-registered building or its separate part, in accordance with the regulation governing the procedure for registration in the real estate register, and upon the registration of the building in the real estate register, the mortgage shall be registered ex officio on the constructed building, i.e. a separate part of the building. "*

*In Article 11, paragraph 4, the word "single" shall be replaced by "separate".*

*In Article 12, paragraph 1, item 1, after the words "first and last name," the words "unique personal identifier" are added, and after the words "or business name", comma and the words "identification number" are added.*

*In Article 14, paragraph 1, full stop at the end of the sentence is replaced with a comma and the words "with the consent of the creditor of the secured receivable" are added.*

*After paragraph 1, paragraph 2 is added to read as follows:*

*"It shall be considered that the consent of the creditor of secured receivable referred to in paragraph 1 of this Article shall exist when there is a contractual obligation of the real estate owner under the loan agreement or other similar contract to establish the mortgage for the benefit of the creditor."*

*Former paragraph 2 becomes paragraph 3.*

*In paragraph 4, which becomes paragraph 5, the words "at the request of the creditor" shall be replaced by the words "in accordance with the regulation governing the procedure for registration in the real estate register".*

*In Article 23, the title above the article and the article shall be amended to read:*

### *"The Indivisibility of Mortgage*

#### *Article 23*

*If the owner, with the consent of the creditor, splits the subject of mortgage, the mortgage is ex officio registered on all real estate units created by the splitting (indivisibility) as a joint mortgage.*

*If a building or building under construction is mortgaged that way so that the right of ownership can exist on separate parts (condominium), a mortgage that existed on the whole building or the building under construction shall be entered ex officio on all newly created separate parts, as a joint mortgage, and after apportioning of condominium units, the mortgage cannot be established on the building or the building under construction as a whole.*

*Mortgaged real estate units can only be merged if all the real estate units being merged are equally mortgaged, and after the mortgage merger, they exist on the newly created real estate. "*

*In Article 31, after paragraph 1, paragraph 2 is added to read as follows:*

*"The request referred to in paragraph 1 of this Article shall be submitted in writing, with signature verification."*

*Former paragraph 2 becomes paragraph 3.*

*In paragraph 5, the number "2" is replaced by the number "3".*

*In paragraph 10, the number "7" is replaced by the number "8".*

*In paragraph 11, the number "5" is replaced by the number "6".*

*In Article 39, after paragraph 1, paragraph 2 is added to read as follows:*

*"If the subject of the mortgage is a separate part of the building under construction, its sale for satisfaction purposes (sale of a separate part of the building under construction) shall be made by assignment, for a fee, of the contract for the building construction and the transfer of ownership on the mortgaged separate part (by assigning a purchase contract for the separate part of the building under construction). "*

*Former paragraph 2 becomes paragraph 3.*

*In paragraph 4, the number "2" is replaced by the number "3".*

*After paragraph 4, a new paragraph 5 is added to read as follows:*

*"The contract referred to in Paragraphs 1 and 2 of this Article shall be concluded in the form of a notarial deed or or a notarized private document (solemnization), and the buyer or receiver of the contract referred to in para. 1 and 2 of this Article, shall register in the real estate register his/her right to the building under construction, or a separate part thereof, pursuant to that contract. "*

## **4.2 Ex-officio Mortgage Release and the Form of Release Statement**

**Recommendation:** The procedure for ex-officio mortgage release should be further regulated upon release statement notarization, considering the possibility of the owner of the mortgaged real estate to dispose of the mortgage that was not erased within period of three years. RGA representatives pointed out this problem.

In addition, the form of the release statement should be explicitly prescribed. Consider the possibility of, in addition to the traditional release statement issued by banks in paper form, with the notarization of signatures on a statement confirming the identity of the signatories, to introduce an electronic release statement in our legal system. Considering that the electronic release statement must be signed by means of qualified electronic signature, the use of which guarantees the highest degree of reliability of the signatory's identification, such release statement could be produced without the participation of a public notary.

**Explanation:** Since the Mortgage Law allowed the owner, instead of releasing the mortgage upon payment of the debt, the real estate owner can use that mortgage within three years period to secure another debt, it is necessary to modify the rules of ex officio mortgage release so that this power of the real estate owner is not limited.

Regarding the form of the release statement, in today's practice it is common for this statement to be given in the form of a signature notarization, which now seems to be a legal rule.

**Proposed text to amend the law:**

*In Article 43, the name of the chapter above the article and the article shall be amended to read:*

*„Chapter One*

*RELEASE*

*Article 43*

*The mortgage shall be terminated by de-registration from the real estate register it was registered in, in accordance with the law (hereinafter: mortgage release).*

*Mortgage release shall be implemented as defined in this Law and the law governing the procedure for registration in the real estate register. "*

*In Article 44, the heading above the article shall be amended to read:*

*"Release at Owner's Request."*

*In paragraph 1, the word "De-registration" is replaced by "Release."*

*In paragraph 2, item 1) is amended to read:*

*"1) a written statement from the mortgage creditor that he/she agrees to the mortgage release, where the signature of the mortgage creditor is notarized by the authority in charge of notarization or"*

*In paragraph 4, item at the end of the paragraph is replaced with a comma and the words: "in writing with signature notarization" are added.*

*After paragraph 5, new paragraphs 6 and 7 are added to read:*

*"Ex-officio mortgage release in accordance with the law governing the procedure for registration in the real estate register shall be made only after the expiry of a period of 3 years from the date when the ex officio deliverer delivered to the real estate register a document eligible for release, unless a waiver of the owner has been registered in the register on disposing of a mortgage that has not been erased in accordance with Article 54 of this Law.*

*In the case referred to in paragraph 6 of this Article, the real estate register shall immediately, without issuing a special decision, register annotation of release statement, which shall be deleted ex officio at the time of registration of a new mortgage in accordance with Article 53 of this Law or after the expiration of a period of 3 years referred to in paragraph 6 of this Article. "*

*New transitional provisions:*

*Article XX*

*If (one or more) mortgages have been registered in the real estate register at the time the law has entered into force and at the same time (one or more) mortgages have been registered on the building constructed on that land, legal relations between the mortgage creditors shall be settled by applying the provisions of establishment of unity of real estate, that is, by determination of the land needed for regular use of building contained in the regulation governing the area of planning and construction of buildings.*

*Article XX*

*This Law shall enter into force on the eighth day after its publication in the "Official Gazette of the Republic of Serbia".*

## **5. Law on Real Estate Transactions**

### **5.1 Strengthening the Principle of Unity of Real Estate**

**Recommendation.** Strengthen the principle of the unity of real estate in transactions by clarifying the impossibility of separate land transactions when a building is constructed on it.

**Explanation.** The implementation of this recommendation would improve legal certainty and avoid practical problems arising from the inconsistent implementation of the principle of unity of real estate. A major problem in practice is the contradiction between the provisions of the Law on Planning and Construction through which the unity of real estate is safeguarded and the provisions in the Law on Real Estate Transactions which restricts the transfer of part of the land lot for regular use of the building, which is an area that is not clearly defined.

**Proposed text to amend the law:**

*In Article 3, paragraph 1 of the Law on Real Estate Transactions, the wording: "as well as on land serving for regular use of the building" is replaced by the wording: "i.e. the right of ownership of the cadastre lot and vice versa, by transferring the ownership of land, i.e. cadastre lot, at the same time, the right of ownership of the building, and/or another structure, and/or buildings built on that land, shall be transferred, all within the limits of the rights of the transferor. "*

*Paragraph 2 is deleted.*

*The existing paragraph 3, which becomes paragraph 2, is amended to read:*

*“By transferring ownership of a building constructed on land, i.e. cadastre lot on which the owner of the building has no ownership right, but only the right of use, the right of lease or other right that authorizes him/her to build the building on that land and, permanently or temporarily, has the right of ownership of the building, the right of use or the right of lease shall be also transferred, that is, another right to the land on which the building is located, within the limits of the rights of the transferor. ”*

## **5.2 Prohibition of Disposal of Buildings Under Construction not Pre-Registered in the Cadastre**

**Recommendation:** Prohibit transactions of unregistered separate parts of buildings under construction that have not been pre-registered in the cadastre.

**Explanation:** Implementation of this recommendation would improve legal certainty and further demotivate the construction of buildings without a building permit, as well as the phenomenon of non-registration of buildings in the real estate cadastre. This recommendation has the same purpose as recommendation 2.3. Prohibition of disposing separate parts of buildings under construction that have not been pre-registered in the cadastre, by amending the Law on Planning and Construction. It will be also implemented via this law, so that the two laws are not in conflict. A more detailed explanation of the need for this regulatory change is given in that recommendation.

**Proposed text to amend the law:**

*Article 4a is amended to read:*

*“A real estate contract shall be void if a separate part of the building under construction - subject of the transaction has not been pre-registered in the real estate cadastre. at the time of the contract signing.*

*A real estate contract shall be null and void if the subject of that contract is a building, or a separate part of the building, built after the law governing the legalization of buildings has entered into force, without a building permit or decision approving the construction works in accordance with regulations governing planning and construction, or for which an annotation on the ban of alienation has been registered in the register in accordance with the law governing the legalization. ”*



## 6. Family Law

### 6.1 Impact of Martial Property Registration in the Cadastre on Joint Ownership Regime

**Recommendation.** Define that the registration of the right to real estate in joint ownership of the spouses will not be considered as exercised in the names of both spouses when it was exercised in the name of only one of them if, at the time of the registration both spouses have delivered a statement that the subject real estate is not a joint but a separate property of one of the spouses.

**Explanation.** This recommendation was made in order to conduct alignment between the provisions of the Family Law and the provisions of the Law on Real Estate and Utilities Cadastre Registration Procedure.

**Proposed text to amend the law:**

*In Article 176 of the Family Law, paragraph 2 is amended to read:*

*“It shall be considered that the registration of the right to real estate in joint ownership of the spouses was exercised in the name of both spouses even when it was exercised in the name of only one of them, unless after the registration a written agreement of the spouse on the division of the joint ownership or a marital agreement was concluded, or if at the registration both spouses delivered a statement that in that particular case subject of the registration was not joint but separate property of one of the spouses or if the rights of the spouses in real estate were decided by the court. ”*

## 7. Law on Property Taxes

### 7.1 Taxpayer of the Tax on the Transfer of Absolute Rights

**Recommendation:** Define that the taxpayer of the tax on transfer of absolute rights to real estate is the acquirer of the right.

**Explanation:** Contrary to the applicable legal solution referred to in Article 25 of the Law on Property Taxes, it is a prevailing practice that the obligation to pay taxes on the transfer of absolute rights in real estate transactions is transferred to the buyer (the right acquirer). This practice is from the previous period when it was not possible to register a real estate right if

the absolute rights transfer tax was not paid out, which is why real estate buyers had an interest in ensuring that the tax liability was altered.

Although the buyer usually assumes the obligation to pay this tax, the seller remains the official payer, which in practice leads to enforcement via seller's property if the buyer fails to pay. The foregoing constitutes an element of legal uncertainty, as sellers do not expect that the obligation to pay taxes on the transfer of absolute rights, which they believe has been passed on to a buyer by a contract solemnized by the public notary, may become the basis of enforcement via their property. Also, in practice the buyer makes a payment in the name of the seller, so in the event of subsequent termination or cancellation of that contract, he/she will have a problem to prove the amount that the court should ordain in terms of return to previous state. It should be noted that during trainings the employees of the tax authorities stated that in the context of foreclosure, it is better for authorities exercising foreclosure to have the acquirer of the right to real estate as the payer, because of the possibility of conduct enforcement via the subject real estate. Additional argument in support of the foregoing is the fact that the exemption from the tax on transfer of absolute rights for the first apartment is approved exactly to the buyer of real estate who is not subject to the tax in question in accordance with the Law on Property Taxes.

**Proposed text to amend the law:**

*In the Law on Property Taxes, Article 25, paragraph 1 is amended to read:*

*“The payer of the tax on transfer of absolute rights shall be the seller, i.e. the transferor of the rights referred to in Article 23, paragraph 1, items 2) and 4) of this Law.*

*In Article 25 of the Law on Property Taxes, paragraph 2 is added to read: “In the case referred to in Article 23, paragraph 1, item 1) of this Law, the payer of tax on transfer of absolute rights shall be the person who acquires the absolute right to real estate. ”*

*Previous items 2-5 shall be 3 - 6.*

*In paragraph 6, number "4." is replaced by number "5."*

*In Article 31a, paragraph 1 is amended to read:*

*“The tax on transfer of absolute rights shall not be paid for the acquisition of the right of ownership of the apartment or family housing building (hereinafter: the apartment), or the ownership share of the apartment or family housing building by the natural person purchasing the first apartment (hereinafter: the buyer of the first apartment), for the area which for the buyer of the first apartment is up to 40 m<sup>2</sup> and for members of his/her family household who, as of July 1, 2006, have not owned or co-owned the apartment on the territory of the Republic of Serbia up to 15 m<sup>2</sup> per each member (hereinafter: appropriate apartment), provided that:*

*1) the buyer of the first apartment is an adult citizen of the Republic of Serbia, residing on the territory of the Republic of Serbia;*

*2) the buyer of the first apartment, as of July 1, 2006, until the date of notarization of the sales contract on the basis of which the buyer acquires the first apartment, did not own or co-own the apartment on the territory of the Republic of Serbia. "*

*In Article 31b, paragraph 1 is amended to read:*

*"The entitlement to tax exemption in accordance with the provisions of Article 31a of this Law shall not be granted to:*

*1) a person whose first purchase of the apartment served as the basis of the right to a refund of value added tax, in accordance with the law governing value added tax, or to a tax exemption from the tax on transfer of absolute rights in accordance with the provisions of this paragraph and Article 31a of this Law;*

*2) a family member of the buyer of the first apartment that served as the basis of right to refund of value added tax, in accordance with the law governing value added tax, or to a tax exemption from the tax on transfer of absolute rights in accordance with the provisions of this paragraph and Article 31a of this Law. "*

*In Article 36, paragraph 2 is amended to read:*

*"The payer of the tax on transfer of absolute rights, for the purpose of exercising the right to tax exemption referred to in Article 31a of this Law, with the documentation referred to in paragraph 1 of this Article, shall also deliver a notarized statement that he/she purchases the first apartment for himself/herself, or for himself/herself and specified members of his/her family household, as well as other evidence showing that the relevant exemption conditions were met. "*

*In Article 36, after paragraph 7, new paragraphs 8 - 10 are added to read:*

*"By way of derogation from paragraph 1 of this Article, the Tax Administration shall ex officio file a tax return on behalf of the taxpayer and set the tax liability, if the taxpayer who does not keep the books, when compiling, notarizing, confirming or adopting the document by the public notary on the basis of which the transfer of real estate rights has been exercised, has declared that he/she wants the tax return filed and tax set as specified above.*

*In the case referred to in paragraph 8 of this Article, the Tax Administration shall set the tax liability on the basis of an document produced, notarized or confirmed by a public notary, i.e. a final decision made by a public notary within the scope of delegated public powers, data from the records of competent authorities and other information that is available to that authority that are relevant for setting the tax liability.*

*If from a document or a final decision made by a public notary, data from the records of the competent authorities and other data in the possession of that authority is not possible to determine the facts relevant for setting the tax liability, the taxpayer shall submit at the request of the Tax Administration the data necessary for setting the tax liability and other information requested by the Tax Administration. "*

*Former paragraph 8 shall become paragraph 11.*

*After paragraph 11, a new paragraph 12 is added to read as follows:*

*"By way of derogation from paragraph 8 of this Article, the taxpayer shall, through a public notary or on his/her own, file a tax return for the property he/she is entitled to the tax exemption, together with supporting evidence."*

*Article 39a shall be amended to read:*

*"The competent tax authority shall determine the right to tax exemption in accordance with the provisions of Art. 31a and 31b, paragraph 1 of this Law, on the basis of own information, the statement of the buyer - taxpayer referred to in Article 36, paragraph 2 of this Law, as well as other evidence that the conditions for the subject entitlement have been met. "*

*In Article 42, paragraphs 1 and 2 shall change to read:*

*"The person whom the absolute right has been transferred to, except the person whom the absolute right to the real estate has been transferred to, i.e. the donor, shall be the subsidiary guarantor for the payment of the tax on transfer of absolute rights, or for payment of the gift tax.*

*The person whom the absolute right has been transferred to, except the person whom the absolute right to the real estate has been transferred to, i.e. the donor, who via contract has undertaken to pay the tax on transfer of absolute rights, or the gift tax, shall be jointly and severally liable for payment of that tax. "*

*After paragraph 2, new paragraphs 3 and 4 shall be added to read:*

*"A person who has transferred an absolute right to real estate shall be a subsidiary guarantor for the payment of that tax.*

*A person who has transferred an absolute right to real estate and who has undertaken via contract to pay the tax on transfer of absolute rights to real estate shall be jointly and severally liable for payment of that tax. "*

## 7.2 Tax Returns and Tax Setting for the Tax on Transfer of Absolute Rights and Inheritance and Gift Tax

**Recommendation:** Define that the taxpayer is not obliged to file a tax return for the tax on transfer of absolute rights and inheritance and gift tax in a situation where the tax liability is created by production, notarization or confirmation of the document by a public notary, i.e. a final decision made by a public notary within the scope of delegated public powers.

**Explanation:** By expanding the scope of data the public notaries enter into the information system when delivering documents they produce, notarize or confirm, or a final decision they make within the scope of delegated public powers, the Tax Administration will be in position to access subject information and set tax liability without filing a tax return.

In that case, the Tax Administration would set the tax liability on the basis of the data in the records of the competent government authorities at its disposal, as well as on the basis of data and documents delivered by public notaries, and then issue a decision to the taxpayer on tax liability.

In cases where the taxpayer chooses to exercise the right to tax exemption, or when the buyer does so in the case of exemption from the tax on transfer of absolute rights with the purchase of the first apartment, he/she would be obliged to declare before the public notary whether he/she deems he/she is entitled to tax exemption and provide the required documentation for subject exemption.

Accepting this recommendation would be a significant contribution to the implementation of the "one-stop shop" policy, while at the same time contributing to reducing the administrative burden for taxpayers.

It would also provide the Tax Administration with an overview of relevant data and evidence relevant to setting the tax liability, which would increase the efficiency and effectiveness of tax procedure.

The subject changes should be adequately reflected in the Law on Property Taxes.

## 7.3 Tax Returns and Tax Setting for the Property Taxes

**Recommendation:** Define that the taxpayer is not obliged to file a tax return for the property tax in a situation where the tax liability is created by production, notarization or confirmation of the document by a public notary, i.e. a final decision made by a public notary within the scope of delegated public powers.

**Explanation:** As in the case of the tax on transfer of absolute rights and inheritance and gift taxes, by expanding the scope of data that notaries enter into the information system when

delivering documents that they produce, notarize or confirm, i.e. final decisions they make within the scope of delegated public powers, the local tax administration will have access to subject information to set the tax liability without filing a tax return.

In that case, the local tax administration would set the tax liability on the basis of the data from the records of the competent government authorities at its disposal, as well as on the basis of data and documents delivered by public notaries, and then it would deliver a decision to the taxpayer on tax liability.

In cases where the taxpayer chooses to exercise the right to a tax exemption or tax credit, he/she would be obliged to declare to the public notary whether he/she deems he/she is entitled to tax exemption and to provide the required documentation for the subject exemption.

Accepting this recommendation would be a significant contribution to the implementation of the "one-stop shop" policy, while at the same time contributing to reducing the administrative burden for taxpayers.

It would also provide the Tax Administration with an overview of relevant data and evidence relevant to setting the tax liability, which would increase the efficiency and effectiveness of tax procedure.

The subject changes should be adequately reflected in the Law on Property Taxes.

#### **7.4 Identification of the Entitlement to Exemption from the Tax on Transfer of Absolute Rights and Inheritance and Gift Taxes**

**Recommendation:** Provide the Tax Administration with adequate access to the data of relevant institutions that will provide for *ex officio* identification of the entitlement to tax exemption.

**Obrazložnje:** When the Tax Administration is provided with adequate access to the records of the relevant institutions that will enable access to data necessary to determine whether the taxpayer is entitled to tax exemption, it is advisable to examine that the right to exemption is to be determined *ex officio* by the Tax Administration, on the basis of available information.

If the Tax Administration is not in position to independently obtain all documents relevant for identifying the entitlement to tax exemption, it would be advisable to define a list of documents the taxpayer would be obliged to deliver to the Tax Administration for the purpose of exercising the entitlement to tax exemption. The taxpayer would deliver the relevant documentation to the Tax Administration with the tax return, or to the public

notary when producing, notarizing or confirming the document by the public notary/final decision made by the public notary within the scope of delegated public powers.

If from the documents, records and other documents it is not possible to identify the facts relevant for identifying the entitlement to tax exemption, the Tax Administration would still have an option to request from the taxpayer to deliver additional data and documents necessary for identification of the entitlement to tax exemption.

Accepting this recommendation would be a significant contribution to the implementation of the "one-stop shop" policy, while at the same time contributing to reducing the administrative burden for taxpayers.

## 7.5 Identifying the Entitlement to Exemption and Tax Credit for Property Taxes

**Recommendation:** Provide the Tax Administration with adequate access to the data of relevant institutions that will provide for *ex officio* identification of the entitlement to exemption and tax credit for the property taxes.

**Explanation:** When the local tax administration is provided with adequate access to the records of the relevant institutions that will enable access to data necessary to determine whether the taxpayer is entitled to tax exemption, i.e. tax credit, it is advisable to examine that the right to exemption/tax credit is to be determined *ex officio* by the local tax administration, on the basis of available information.

If the local tax administration is not in position to independently obtain all documents relevant for identifying the entitlement to tax exemption and tax credit, it would be advisable to define a list of documents the taxpayer would be obliged to deliver to the local tax administration for the purpose of exercising the entitlement to tax exemption. The taxpayer would deliver the relevant documentation to the local tax administration with the tax return, or to the public notary when producing, notarizing or confirming the document by the public notary/final decision made by the public notary within the scope of delegated public powers.

If from the documents, records and other documents it is not possible to identify the facts relevant for identifying the entitlement to tax exemption, the local tax administration would still have an option to request from the taxpayer to deliver additional data and documents necessary for identification of the entitlement to tax exemption.

Accepting this recommendation would be a significant contribution to the implementation of the "one-stop shop" policy, while at the same time contributing to reducing the administrative burden for taxpayers.

## 7.6 Certificate of the Property Tax Return Filing

**Recommendation:** Define that on the day the tax return has been filled with the public notary by the taxpayer, the public notary will produce a certificate that will serve as proof that the tax return has been filed or that the filing of the tax return will be stated in a document produced, notarized or confirmed by the public notary.

The subject changes should be adequately reflected in the Law on Property Taxes.

**Explanation:** The Law on Property Taxes did not define how the taxpayer will prove that he/she has filled a tax return through a public notary, that is, it does not provide for a document/certificate issued by a public notary to the taxpayer as evidence of the filed tax return.

## 7.7 Incurrence of the Property Tax Liability

**Recommendation:** Define in the Law on Property Taxes that the tax liability in case of a real estate transaction contract where the parties have agreed that the contract has legal effect upon fulfillment of conditions set by the contract or a deferred term (such as full pay out of the purchase price) will be incurred upon the fulfillment of that condition or term, i.e. the registration of the right acquirer in the real estate cadastre.

**Explanation:** The Law on Property Taxes does not define any special rule for incurrence of a tax liability in cases where the execution of a legal transaction (transfer of ownership of a real estate) depends on (non)fulfillment of certain conditions or a deferred term. The purpose of the proposed amendment is to prevent the taxation of the transfer of ownership right (i.e. the ownership right in case of property taxes), which has not legally, formally and intrinsically occurred and potentially will never occur.

**Proposed text to amend the law:**

*In Article 10, paragraph 7 of the Law on Property Taxes, after item 6), a new item 7) is added to read as follows:*

*"7) when the legal transaction has been concluded with conditions or a deferred deadline for the acquisition of rights - on the date of fulfillment of conditions or deferred deadline, unless the tax liability has been incurred on other grounds in accordance with Article 10, paragraph 1 of this Law."*

*In Article 29b, paragraph 1 is amended to read:*



*“The tax liability shall be incurred on the day of the conclusion of the contract on the transfer of absolute rights, and/or on the lease of construction or water land referred to in Article 23, paragraph 2 of this Law, except in the cases referred to in Para. 2 to 10 of this Article. ”*

*In Article 29, after paragraph 9, a new paragraph 10 is added to read as follows:*

*“If the transfer of absolute rights has been made on the basis of a contract with a condition or a deferred deadline for acquisition of rights, the tax liability shall be incurred on the day of fulfillment of the conditions or deferred deadline.”*

*In Article 17, paragraph 1 is amended to read:*

*“The tax liability related to inheritance shall be incurred on the day the decision on the inheritance has become final, except in the case referred to in para. 3, 5 and 6 of this Article. ”*

*In Article 17, after paragraph 5, paragraph 6 is added to read:*

*“If the heir has introduced with a deferred condition or deadline, the tax liability shall be incurred on the day the deferred condition or deadline has been fulfilled.”*

## **8. Law on Tax Procedure and Tax Administration**

### **8.1 Power of Enforced Collection of Tax Debts**

**Recommendation.** Amend the provisions related to enforced collection of tax debts so that the enforcement powers are delegated to public enforcement agents.

**Explanation.** The government does not have sufficient capacity to enforce collection of tax debts, and the prospects of providing additional capacities in the near future are not favorable. If this collection is made possible as regulated by the Law on Enforcement and Security, it will be more efficient, with positive effects on the public budget. In making this recommendation, we also take into account the positive results that public enforcement agents have produced in the collection of court fees.

## 8.2 Power of Enforced Collection of Cadastre Registration Fee

**Recommendation:** Amend regulations governing the enforced collection of cadastre registration fee, so that public enforcement agents are delegated with powers to enforce collection of such fees, for a charge that is consistent with the complexity of the procedure.

**Explanation:** Tax Administration does not have sufficient capacity to enforce collection of tax debts, let alone fees for the cadastre registration process. The prospect of providing these capacities in the near future are not favorable. If the subject collection is made possible through public enforcement agents, which have been delegated with a limited powers to enforced collection as per the Law on Enforcement and Security, collection of cadastre registration fees will be more efficient, with positive effects for the public budget. In making this recommendation, we also take into account the positive results that public enforcement agents have produced in the collection of court fees.

Analyse whether it would be necessary to amend Article 4 of the Law on Enforcement and Security, which prescribes the powers of the public enforcement agents, as well as Article 52, which prescribes which documents can be considered as credible, in order to ensure collection of fees for the cadastre registration process.

## 9. Law on Civil Procedure

### 9.1 Required Contents of Decisions Registered in the Real Estate Cadastre

**Recommendation:** Define the personal identifier (JMBG) is a mandatory content of decisions (judgments and decisions) by the courts and serving as the basis for real estate cadastre registration.

**Explanation:** This amendment is recommended for the purpose of alignment of provisions of the Law on Real Estate and Utilities Cadastre Registration Procedure and the Law on Civil Procedure.

**Proposed text to amend the law:**

*In Article 355, paragraph 2 of the Law on Civil Procedure, the wording: "name and surname, place of residence or residence, and/or seat of the parties" shall be replaced by the wording: "basic information about the parties".*

*After paragraph 2, a new paragraph 3 is added to read as follows:*

*"The basic information about the parties shall include: name, name of a parent and surname, address of place of residence and/or residence and personal identifier (JMBG), and for an alien, instead of the personal identifier, identification number from a valid travel document issued by the competent authority, and/or for the legal entity, business name, registered address and registration number, or a number of registration in the register or records if it does not have a registration number, and for the foreign legal entity, instead of the registration number, a number of registration in the register of the country of establishment and the name of that registry. "*

*Previous items 3- 6 shall be items 4 - 7.*

## **10. Law on Non-Contentious Proceedings**

### **10.1 Required Contents of Decisions Registered in the Real Estate Cadastre**

**Recommendation:** Align the Law on Non-Contentious Proceedings with the Law on Real Estate and Utilities Cadastre Registration Procedure with respect to compulsory data on persons decisions made in the non-contentious proceedings relate to. Define the personal identifier (JMBG) is the compulsory contents of court decisions that are registered in the real estate cadastre.

**Explanation:** The Law on Non-Contentious Proceedings is not aligned with the Law on Real Estate and Utilities Cadastre Registration Procedure with respect to the compulsory data on persons the inheritance decisions made in non-contentious proceedings relate to. As subject decisions were made in the non-contentious proceedings of the cadastre registration document, alignment of the subject regulations is required.

**Proposed text to amend the law:**

*In Article 122, paragraph 2 of the Law on Non-Contentious Proceedings, the wording: "name of the deceased person, name of a parent, occupation" shall be replaced with the wording "the basic information on deceased person", the wording "name, occupation and residence of the heir" shall be replaced with the wording "the basic information on the heirs", and the wording: "name, occupation and residence of the persons the legacy belonged to" shall be replaced with the wording "basic information on the persons the legacy belonged to."*

*New paragraph 3 is added to read:*

*"The basic information referred to in paragraph 2 of this Article shall include: name, name of a parent and surname, address of the lace of residence or residence and the personal*

*identifier, and for an alien, instead of the personal identifier, identification number from a valid travel document issued by the competent authority. "*

*Previously paragraph 3 shall be paragraph 4.*

## **11. Law on General Administrative Procedure**

### **11.1 Set the Time Limit for Reviewing an Administrative Act on Recommendation of the Ombudsman**

**Recommendation:** Amend Article 185, Paragraph 2 of the Law on General Administrative Procedure by prescribing a deadline within which the first-instance authority may, as recommended by the Ombudsman, annul, revoke or amend its final decision.

**Explanation:** Article 185, paragraph 1 of the Law on General Administrative Procedure defined that the competent authority may, as recommended by the Ombudsman, annul, revoke or amend its final decision, if the party whose rights or responsibilities were the subject of a decision, as well as the opposing party, agree so and if this does not violate the interest of the third party. Paragraph 2 of this Article defined that this possibility is not time limited. We believe that this solution creates major legal uncertainty, regardless of the fact that the annulment, revocation or amendment of the decision cannot violate the interests of third parties. Namely, the question arises here as to how that third party will prove that his or her interest has been violated, especially in view of the fact that interest is a subjective category. In this particular case, when it comes to acquiring real estate, the interest of a third party could be violated when the registration annulment means the return of a uncongenial neighbor or his/her heirs after several decades. However, the key objection is that such an unlimited right of revocation of administrative acts violates the legal certainty in the public interest, and in the specific case of cadastre registrations, also the basic principles of cadastre keeping (the principle of registration and the principle of reliance on public books), basics of the institute of property rights (sustain), tax collection, etc.

**Proposed text to amend the law:**

*In Article 185 of the Law on General Administrative Procedure, paragraph 2 shall be amended to read:*

*"The annulment, revocation or amendment of the decision as recommended by the Ombudsman may be effected within 10 years from the day the decision became final."*

## 12. Regulation on the Method of Delivery of Documents in the Process of Cadastre Registration and the Method of Electronic Issuing of Cadastre Excerpts

### 12.1 Ensuring the Visibility of Data on Pending Procedures

**Recommendation:** Amend the Regulation by prescribing the obligation of the RGA to ensure that GKIS has visible and publicly available data on pending cases before the Cadastre Service in relation to specific real estate, in particular the following data: type of registration subject of a decision, time of the request or delivery, as well as the person the registration should be made to.

**Explanation:** Public interest is to ensure the visibility of initiated procedures for registration of changes in the real estate cadastre. When recording the delivery or application in the real estate cadastre, it is not clear what the delivery or application relates to until the moment of registration. This drawback has a particularly negative effect in case of buildings with separate parts (residential buildings with apartments), since no data are available to which particular part of the real estate the annotation or application refers to. Prescribing the required elements of the requested registration will allow the public to learn about the type of pending request, and interested parties will not be forced to contact the RGA's offices to obtain information about the pending request. This will make the procedure much more transparent and efficient.

**Proposed text to amend regulations:**

*In Article 10 of the Regulation on the Method of Delivery of Documents in the Process of Cadastre Registration and the Method of Electronic Issuing of Cadastre Excerpts, new paragraph 2 is added to read:*

*"RGA shall immediately register the relevant facts regarding the initiated procedure, especially the facts about the type of cadastre registration, as well as to which real estate, or a separate part of real estate, that registration should be made as soon as the document or request has been received. "*

*In Article 9, paragraph 2, after the word "contains" the words: "determination of the type of request," are added.*

*In Article 10, paragraph 4, after the wording "(delivery note)" the following wording is added: "in a form the user can save on the computer and print out".*

## 13. The Rulebook on Cadastre Registration Procedure

### 13.1 Delivery of Documents Proving Legal Continuity

**Recommendation:** The Rulebook on Cadastre Registration Procedure, which is being drafted currently, will specify the obligation to deliver documents proving legal continuity in relation to the status of cadastre registration.

**Explanation:** Ex officio deliverers do not deliver documents proving legal continuity for registration under the document they have produced in the process of exercising public powers, and public notaries do not deliver approvals for registration of rights or annexes to real estate contracts, if the original contracts they refer to have been notarized before the onset of the delivery obligation. Although we believe that subject obligations have been unambiguously prescribed by Article 22, paragraphs 2 and Article 23, paragraph 2 of the Law on Real Estate and Utilities Cadastre Registration Procedure, we here propose to amend the regulations for the purpose of consistent and proper implementation in practice. Although this problem will be marginalized over time, as annexes and certificates will be delivered in relation to the contracts for which the ex officio delivery obligation has occurred for registration in the cadastre. It can happen that the public notary has failed to deliver the contract, in which case the ex officio deliverer of an annex to that contract or certificate will have to deliver the actual contract for registration in the cadastre.

## 14. Rulebook on the Integrated Electronic Procedure Implementation

### 14.1 Delivery of Documents for Pre-Registration of a Building Under Construction

**Recommendation:** Define that the registration of pre-registration of a building under construction is conducted ex officio, as part of the integrated procedure. Options for ex officio registration:

- 1) immediately after the construction permitting, only for a certain type of buildings; or
- 2) immediately after construction permitting, if in the construction permit application the developer has requested pre-registration of the subject building in the cadastre; or
- 3) immediately upon the notice of commencement of works, which is the current legal solution.

**Explanation:** The registration of ex officio buildings, i.e. separate parts of buildings under construction in the cadastre, was introduced into our legal system, primarily in the interest of legal certainty of buyers of the buildings under construction. The developer is entitled to this ex officio registration in the simplest possible manner. We believe that the registration of the pre-registration of a building under construction should be carried out through the integrated procedure, because it is only one of the stages of implementation of the integrated procedure, which by its very nature is very similar to the phase of the building registration in the cadastre on the basis of the issued occupancy permit. Networking and connecting CEOP to the e-Counter to automate the process of a building permit and other technical documentation delivery for pre-registration of that building in the cadastre is an extremely important technical solution that simplifies the procedure for the body that issued subject building permit and the Cadastre Service.

**Proposed text to amend regulations:**

*In the Rulebook on the Integrated Electronic Procedure Implementation, in Article 21, paragraph 3, item 4) is added to read:*

*"4) to the authority in charge of state survey and cadastre with an excerpt from the design with graphical annexes and specification of separate parts, for the purpose of pre-registration of a building under construction."*

If we opt for a solution to make a pre-registration after building permitting, and only for the buildings to be placed on the market, then in Article 16 of the Rulebook, a new paragraph 6 should be added to read:

*"If the building for which the building permit application has been submitted, or separate parts of that building are to be placed on the market, i.e. resale, the developer may indicate this in the building permit application, in which case the competent authority shall immediately deliver it to the competent authority in charge of cadastre after the finality of the building permit for the purpose of registration of the subject pre-registration. "*

## **14.2 Alignment of Deadlines with the Law on Real Estate and Utilities Cadastre Registration Procedure**

**Recommendation:** Align the deadlines set in the Rulebook on the Integrated Electronic Procedure Implementation with the Law on Real Estate and Utilities Cadastre Registration Procedure (LREUCRP).

**Explanation:** Article 23, Paragraph 4 of LREUCRP defined the ex officio delivery within 24 hours from the day of enforcement of the decision serving as the basis of registration, while

Article 48 of the Rulebook defined a five working day deadline. Also, Article 36 of LREUCRP defined a five working day deadline for a decision on registration in the cadastre, while Article 49 of the Rulebook define a seven day deadline. Additionally, it is necessary to align 30 day deadline from paragraph 3 for registration in the utilities cadastre, since Article 48, paragraph 4 of LREUCRP defined that the same provisions governing the registration in the real estate cadastre shall be applied to utilities, i.e. a five working day deadline - Article 36 of LREUCRP. With amendments we propose alignment of deadlines prescribed by the rulebook with deadlines specified in the regulation governing the procedure of registration in the real estate and utilities cadastre related to the procedure of the authority in charge of the state survey and cadastre and the competent authority.

#### **PROPOSED TEXT TO AMEND REGULATIONS:**

*In Article 48, paragraph 1 of the Rulebook on the Integrated Electronic Procedure Implementation, the wording: "five working days" is replaced by the wording: "24 hours".*

*In Article 49, paragraph 1, the wording: "within seven days" is replaced by the wording: "within five working days".*

*In Article 49, paragraph 3, the wording: "within 30 days" is replaced by the wording: "within five working days".*

## **15. Rulebook on Tax Return Forms for Property Taxes**

### **15.1 Content of the Tax Return for the Tax on Transfer of Absolute Rights**

**Recommendation:** Reduce the content of the tax return for the tax on transfer of absolute rights (PPI-4 form) by omitting all fields that are not necessary for tax liability setting, that is, relating to information available to the Tax Administration.

**Explanation:** The content of the tax return for the tax on transfer of absolute rights is needlessly complex, which makes it difficult for taxpayers to complete the return without any corresponding benefit for tax authorities, given that the Tax Administration receives most of the tax related information from the public notaries, RGA and other ex officio deliverers. As a result, tax returns for the tax on transfer of absolute rights are not filed through public notaries, but delivered directly by the taxpayer to the Tax Administration, thus violating the concept of one-stop shop for real estate transactions.



## 15.2 Content of the Tax Return for the Inheritance and Gift Tax

**Recommendation:** Reduce the content of the tax return for the inheritance and gift tax (PPI-3 form) by omitting all fields that are not necessary for tax liability setting, that is, relating to information available to the Tax Administration.

**Explanation:** The content of the tax return for the inheritance and gift tax is needlessly complex, which makes it difficult for taxpayers to complete the return without any corresponding benefit for tax authorities, given that the Tax Administration receives most of the tax related information from the public notaries, RGA and other ex officio deliverers. As a result, tax returns for the inheritance and gift tax are not filed through public notaries, but delivered directly by the taxpayer to the Tax Administration, thus violating the concept of one-stop shop for real estate transactions.

## 15.3 Content of the Tax Return for the Property Tax

**Recommendation:** Reduce the content of the tax return for the property tax (PPI-2 form) by omitting all fields that are not necessary for tax liability setting, that is, relating to information available to tax authorities.

**Explanation:** The content of the tax return for the property tax for natural persons is needlessly complex, which makes it difficult for taxpayers - natural persons to complete the return without any corresponding benefit for tax authorities, given that tax authorities receive most of the tax related information from the public notaries, RGA and other ex officio deliverers. As a result, tax returns for the property tax are not filed through public notaries, but delivered directly by the taxpayer to the competent tax authorities, thus violating the concept of one-stop shop for real estate transactions.

# 16. Functionalities of Information Systems

## 16.1 The Scope of Data the Public Notary Enters into the Information System

**Recommendation:** Expand the scope of data PN enters into the Information System (PIS) when delivering a document transferring real estate rights with the data necessary for setting property tax (property tax, tax on transfer of absolute rights and inheritance and gift tax).

**Explanation:** If the scope of data the public notary, as ex officio deliverer in the procedure of the real estate cadastre registration, were to be expanded, subject entry, given the volume of data entered currently, would be in most cases sufficient to set property taxes.

## 16.2 Format of Data Delivered to Tax Authorities

**Recommendation:** Provide an interface that would allow automatic delivery of data delivered by the public notary to RGA also through the e-Tax system and preferably through the information system of the local tax administrations.

**Explanation:** The Tax Administration of the Republic of Serbia and local tax administrations now receive documents required for property tax setting in a way that is far from optimal. Namely, information delivery is not automatic, but the tax authorities have to check in the RGA information system whether there are documents required for tax liability setting. When subject documents are in place, the data required for tax setting is in the form of scanned documents (PDF format), which makes it difficult for tax authorities to act, as it prevents automatic downloading or simple copying of the subject data.

## 16.3 Document Download by Tax Authorities from e-Counter System

**Recommendation:** Facilitate streamlined data download from e-Counter by competent tax and other authorities.

**Explanation:** The Tax Administration suggests the need for improvement of the RGA system, because due to the system congestion, the documents in PDF format, which are the basis for conducting the procedure before the Tax Administration, cannot be downloaded.

## 16.4 Clear Indication of the Purpose of Document Delivery

**Recommendation:** Provide information system functionality that will allow for additional verification of the purpose of delivery indicated by the ex officio deliverer before such delivery is finally made - by separate query to the subject of deliver to verify the purpose of delivery and by virtue of a reminder of what delivery purpose has been indicated before sending the document.

**Explanation:** Errors in delivery purpose indication have been observed in the ex officio deliverers' practice, which can have significant negative consequences on the implementation of the registration procedure. Errors either cause the documentation to be

“lost” in the system or to repetitive deliveries, which duplicates the work of the Cadastre Service because it has to merge or suspend cases with multiple repeated deliveries.

## 16.5 Document Delivery Receipt Printing in the e-Counter Application

**Recommendation:** Provide all ex officio deliverers with an option to save the document receipt through the e-Counter on a computer in PDF/A format, or print. For a public notary, the document delivery receipt should also include information on the basis of delivery, in order to inform the ex officio deliverer in a timely manner about the basis of delivery, that is, the expected outcome of ex officio registration, and to ensure that, in case of error, the public notaries can react promptly and repeat delivery on corrected basis.

**Explanation:** The e-Counter application does not produce the receipt of document delivery through the e-Counter application in any form. The only executable is the *screenshot*. Persons who, in the capacity of the transferor, or the acquirer of the right, deliver relevant documents through public notaries, as ex officio deliverers, may need the document delivery receipt.

## 16.6 Registration of Residence through One-Stop Shop System

**Recommendation:** Create an option where registration/deregistration of residence in connection with the transfer of real estate rights can be executed on the basis of documents delivered by a public notary.

**Explanation:** Intention of this recommendation is to make it easier for citizens to change their place of residence, as well as to ensure that the residence records are kept up to. At the same time, such a mechanism would allow citizens to exercise the right to tax deduction for property taxes, they are entitled to on the basis of the fact that they live in a house or apartment, which is subject to taxation.

# 17. Rules of Procedure and Guidelines

## 17.1 Power of Attorney of a Legal Entity

**Recommendation:** Define the Rules of Procedure of Public Notaries that the status of a power of attorney of a legal entity shall be determined by access to the public register (Register of

Business Entities or other status register), and by inspection of the excerpt from the public register or the act of establishment only for those legal entities for which electronic access to the public register is not allowed.

**Explanation:** In the practice of public notaries, legal representatives of legal entities are often required to prove this status by delivering an excerpt from the public register, although this is in direct conflict with Articles 9, 103 and 215 of the Law on General Administrative Procedure. This is also done in situations where there is the possibility of electronic access to the public register in order to verify the power of attorney of a legal entity. During consultations with representatives of public notaries, it was concluded that determining the power of attorney status by access to the public register would be sufficient, and only for those legal entities where electronic access to the public registers is not allowed, the existing solution should be retained, which includes verification via the excerpt from the public register or act of establishment.

#### **Proposed text to amend the Rules of Procedure:**

*Article 62 of the Rules of Procedure of Public Notaries is amended to read:*

*“The capacity of the power of attorney of a legal entity and the extent of powers shall be determined by access to the public register where representatives of that legal entity have been registered (Register of Business Entities, Register of Associations, etc.).*

*If data on representatives of a certain type of legal entity are not available online or are not registered in the public register, the status of the representative and the scope of his/her powers can also be determined via the excerpt from the public register containing that piece of data, or via other evidence that can serve as the basis for these facts. ”*

## **17.2 Procedure of Indication of the Purpose of Delivery**

**Recommendation:** The Chamber of Public Notaries should produce guidelines for public notaries to alert them of their responsibility towards a party in the procedure if, due to incorrect indication of the purpose of delivery, the rights of the party from the subject document are not registered in the cadastre.

**Explanation:** Public notaries make mistakes in indicating the purpose of delivery - be it delivery for registration of rights, registration of pre-registration of rights or solely for recording purposes - which may cause the Cadastre Service not to initiate the procedure of registration of changes in the cadastre.

### 17.3 Document Delivery Regarding the Review of its Legality

**Recommendation:** Guidelines of the RGA Director should define to whom, in addition to the Public Prosecutor, the Cadastre Service should deliver the document that served as the basis for registration and annotation referred to in Article 15, paragraph 1, item 14 of the Law, for review in accordance with Article 32, paragraph 3 and Article 33, paragraph 7 of the Law.

**Explanation:** Since the Law on Registration did not precisely stipulate to whom the Cadastre Service, apart from the Public Prosecutor, delivers the document for registration for the purpose of reviewing its legality and initiating the procedure of annulment or abolition, recommendation is to define it in the guidelines of the RGA Director. Subject guidance should be agreed upon with the ministry in charge of justice, since the ministry is responsible for the most significant ex officio deliverers. Presumably, document produced by a public notary should also be delivered to the Chamber of Public Notaries and the Minister of Justice, document produced by the court to the president of that court and the Minister of Justice, etc.

### 17.4 Delivery Notification

**Recommendation:** In the e-Counter User's Guide, explain how to ensure issuing of a receipt related to application delivery.

**Explanation:** If in accordance with the recommendations related to the functionality of the information systems, the option of confirming the application is introduced, this functionality will have to be described in the User's Guide.

**Proposed text to amend the User's Guide:**

*In the e-Counter User's Guide, Part 2 Ex Officio Delivery, 2.1. Document Delivery to the Cadastre, after the wording "When the delivery is effectuated the user receives a notification that subject data has been successfully downloaded.", new wording is added to read: "The user can save this notification on his/her computer by clicking SAVE, or print by clicking PRINT. "*

*In Part 3 Application Delivery, after the last sentence in this section, new sentence is added to read: "After sending the application, the user will receive notification that the request has been sent to the competent service. The user can save this notification on his/her computer by clicking SAVE, or print by clicking PRINT. "*