

TASIC & PARTNERS

ADVOKATI • ATTORNEYS AT LAW

NEWSLETTER 2

30/01/2015

The Law on Public Notaries (“Official Gazette RS”, no. 132/14
31/2011...6/2015)

The Law on Real Estate Transfer (“Official Gazette RS”, no. 93/2014...6/2015)

The Law on Inheritance (“Official Gazette RS”, no. 48/95...6/2015)

Family Law (“Official Gazette RS”, no. 18/2005...6/2015)

The Law on Non-Contentious Procedure (“Official Gazette RS”, no.
25/82...6/2015)



The National Assembly of the Republic of Serbia on the session of the Second Extraordinary Assembly in 2015 held on January 21, 2015 has passed The Law on Amendments of the Law The Law on Public Notaries, The Law on Real Estate Transfer, The Law on Inheritance, Family Law, The Law on Non-Contentious Procedure, all published in Official Gazette RS no. 06/2015, and entered into force and became applicable as of January 23, 2015.

- ***The Law on Public Notaries***

The most significant amendments to the Law on Public Notaries (hereinafter: "LPN") refer to the legal affairs for which it is required mandatory form of public notary record. Specifically, unlike previous legal solution, **mandatory form of public notary record is now stipulated only for:** real estate transfer contracts of persons who are legally incapable, agreements on legal support and contracts on the mortgage and pledge statement if these contain an explicit statement that the obliged persons on the basis of contract on mortgage i.e. pledge statement can immediately apply compulsory enforcement, either through court or through extrajudicial procedures.

The novelty refers to the introduction of **solemnization which is now reflected** only in **confirming a private document, which is done by placing a clause on confirmation (solemnization clause)**, by which it is confirmed that the private document was read to the parties and that the parties have declared that the content of the document corresponds to their will and that they have personally signed it.

The process of solemnization is provided for contracts for real estate transfer, pledge statement if they do not include an explicit statement of the obliged persons that on the basis of contract on mortgage i.e. pledge statement can immediately apply compulsory enforcement, and the contracts by which the real and personal easement are established.

LPN now explicitly provides for the duty of the public notary to examine the conditions for undertaking legal business and the conditions of permissibility of a legal business. The novelty is that the court was given the authority to decide on the complaint against the decision on rejecting official notary acts - solemnization, which was previously under the jurisdiction of the Chamber of Notaries.

- ***The Law on Real Estate Transfer***

Amendments to the Law on Real Estate Transfer stipulate that real estate transfer contracts are concluded in the form of public notary confirmed (solemnized) documents, and for the purpose of harmonization with the amendments to LPN.

Amendments to the Law on Real Estate Law prescribe the obligation of the public notary to warn the contractors if he determines that the court has already certified the signatures on the contract on transfer of the same property, that the public notary or the court made public notary record on the transfer of the same property, or that a public notary confirmed (solemnized) a contract on the transfer of the same property, and the seller is the same person, also when public notary determines that the contract facility or separate part of the facility for which usage permit has not been issued or which is being under the process of legalization, and if the contracting parties oppose entering of such warning, notary shall refuse to take the required official action.

The new Law on Real Estate Transfer stipulates a mandatory form of solemnization, in relation to **statement of waiver of the owner of immovable property in favor of the Republic of Serbia**, and it serves as a basis for registration into the public register of real estate and rights therein.

- ***The Law on Inheritance***

Amendments to the Law on Inheritance track changes of LPN and introduce **public notary testaments that composes a public notary in the form of public notary record**, as well as the obligation of **composing the agreements on the transfer and distribution of property during life, lifelong maintenance contracts and agreements on the transfer of hereditary share in the form of public notary confirmed** (solemnized) documents, with following obligation of the public notary to warn contractors during confirmation of these contracts of the consequences emerging upon drafting these agreements.

- ***Family Law***

The amendments to the Family Law provide mandatory **public notary record** for agreements on legal support, as well as agreements:

- 1) on property relations among spouses,
- 2) marital contracts and
- 3) contracts on the transfer and distribution of joint property of spouses.

The amendments to the Family Law stipulate that the **acknowledgement of paternity**, could be given before a public notary, and not only before the registrar, the guardianship authority or court, as it was provided earlier.

- ***The Law on Non-Contentious Procedure***

The Law on Non-Contentious Procedure has been changed in the part that regulates the possibility and a prohibition of delegation of certain tasks of court to the public notary in the sense that it has now specified that the **court decides on the appropriateness of entrusting tasks in the specific case**.

The process of drafting documents has also been changed in part which stipulates that now public notary only verifies i.e. determines the **nullity of legal business as well as its meaningfulness and comprehensibility**, what he is obliged to warn the parties of, i.e. to enter the warning in the document itself.