



# 4/2017 NEWSLETTER

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In summer 2015, National Assembly of Serbia, enacted the Law on Conversion of Right of Use into Ownership of Buildable Land with a Fee, by which Republic of Serbia has constituted, along with the Law on Planning and Construction, frame for completion of the ownership transformation over buildable land, and all for improvement of the construction industry in the Republic of Serbia. Conversion of right of use into ownership undoubtedly contributes to the legal security of investors which shall acquire ownership of buildable land.

Should you have additional questions, feel free to contact us.

**Isailovic&partners**  
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**Author: Đorđe Kurdulija**

## **CONVERSION OF RIGHT OF USE INTO OWNERSHIP OF BUILDABLE LAND WITHOUT FEE**

Provisions of the Law on Planning and Construction (article 102.) prescribes that the right of use on buildable land, shall transform into ownership, without fee on the day of enactment of the Law on Planning and Construction (29th December 2014).

Law on Planning and Construction prescribes that the procedure of registration of the ownership shall be conducted before the authority competent for the state survey business and cadaster (competent Service of the real estate cadaster), ex officio, yet the practice showed that cadaster, due to early submitted and unfinished cases, do not manage to execute registration ex officio, hence, the parties are obliged to submit the request to cadaster in order to accelerate the registration of the ownership.

Ownership of the cadastral parcel shall be registered in favor of the person who is inscribed as owner of the object, i.e. of the objects which are located on that parcel, i.e. in the ownership of the person who is inscribed as holder of the right of use on cadastral parcel on unconstructed buildable land.

Abovementioned provision shall not apply for the following persons:

- 1) persons, holders of right of use on buildable land, which are or were the companies and other legal entities on which were applied provisions of the law governing privatization, bankruptcy and enforcement procedure, as well as on their legal followers;
- 2) persons, holders of the right of use on unconstructed buildable land in public ownership which was acquired for construction in accordance with the earlier regulations which governed buildable land till 13th of May 2013, or based on decision of the competent authority;
- 3) persons, holders of the right of use on buildable land, whose position is regulated by the law governing sport, as well as association;
- 4) public companies, holders of the right of use on buildable land;

5) persons, holders of the right of use on buildable land on which shall be applied provisions of the regulation of the Republic of Serbia and bilateral international agreements which govern the execution of Annex and Agreement on the succession issues ("Official Gazette SRJ – International agreements" number 6/02).

For the afore mentioned persons shall be applied provisions of the Law on Conversion of Right of Use into Ownership of Buildable Land with a Fee, which law shall be specially analyzed below.

If on one cadastral parcel is built more objects, which are in the ownership of different persons, competent cadaster shall inscribe in the register of real estate that the cadastral parcel is in co-ownership of those persons, and that their ideal part is in proportion with the surface they own in relation to the total surface of the objects located on that parcel.

If on cadastral parcel is located an object, i.e. objects which are in co-ownership of different persons i.e. if an object is consisted of separate parts which are in ownership of different persons, the competent cadaster shall inscribe in the real estate register that the cadastral parcel is in co-ownership of those persons and that their ideal part is in proportion with the surface they own in relation to the total surface of the object, i.e. objects located on that parcel.

If the existing object is not inscribed in the real estate register, the request for registration of ownership of buildable land shall be submitted only after registration of that new object in the real estate register (e.g. after completion of the legalization procedure or after obtaining the use permit in the regular procedure) or shall be submitted based on legally valid court decision by which such registration is imposed.

## **CONVERSION OF THE RIGHT OF USE INTO OWNERSHIP ON BUILDABLE LAND WITHOUT FEE IN CASE OF EXISTINANCE OF AGREEMENT ON LEASE OF BUILDABLE LAND**

To owners of the objects built on buildable land which is in the public ownership and for which objects is concluded lease agreement with the purpose of construction, for the period of minimum 50 years, in accordance with earlier provisions governing planning and construction, at buyer's request – owner of the object or part of the object, shall be determined ownership of buildable land, without fee, if the lease fee is paid in total for the whole duration period of the lease agreement.

To lessees of the buildable land which is in the public ownership, and for which lease agreement is concluded with the purpose of construction with a duration period of minimum 50 years, in accordance with earlier provisions governing planning and construction, at lessee's request, shall be determined ownership of buildable land, without fee, if the lease fee is paid in total for the whole duration period of the lease agreement, unless lessor initiate the court procedure for termination of the lease agreement within one year from the enactment day of this Law, and that procedure is terminated legally valid in his favor.

In practice, reason for termination of the agreement is usually the fact that lessee has not built the object i.e. has not completed the purpose of leasing the parcel. The fact that the lease fee is paid in total shall not affect on court to pass different decision except the one in which shall be determined that the lease agreement is terminated, and therefore lessee shall lose the right on conversion of the right of use into ownership on buildable land without fee.



## LAND FOR REGULAR USE AND REAL ESTATE UNITY

To lessees on buildable land which is in the public ownership, for which land is concluded lease agreement without fee in accordance with the provisions of this law, at lessee's request, lease right shall be transformed into ownership of buildable land without fee when Decision on use permit become legally valid, if so stipulated by lease agreement.

Owner of an object, i.e. of the separate physical part of object which is not inscribed as the holder of the right of use on buildable land on which that object, i.e. part of object, is built, shall acquire ownership right on cadastral parcel on which that object is built, aimed to establish the real estate unity, unless when ownership right on the object is acquired based on legalization of the object, i.e. based on the Law on special conditions for the registration of ownership right on objects built without construction permit.

Request for the registration of ownership shall be submitted to the competent Service for real estate cadaster.


If in the procedure for determination of the land for regular use of the object is determined that the surface of the cadastral parcel also represents the land for regular use of the object in accordance with the provisions of the Law on Planning and Construction, the owner of the existing object shall acquire the ownership right on that buildable land, price shall be equal to the market value, by direct sale.

If in the procedure for determination of the land for regular use of the object is determined that the land for the regular use is smaller than cadastral parcel on which the object is built, land owner shall have the right to sell to the owner of the object, if the remaining part of the land cannot form the separate buildable parcel, that remaining part of the land for the price equal to the market value, by direct sale.

If in the procedure for determination of the land for regular use is determined that the land for regular use of the object is smaller than cadastral parcel on which the object is built, land owner shall dispose with that land in accordance with the provisions of the Law on Planning and Construction, if the remaining part of the land can form the separate buildable parcel.

Authority competent for property and legal affairs (in practice that is usually Secretariat for property and legal affairs of the local self-government), shall determine by one Decision the land for regular use and right on conversion of the right of use into ownership, in accordance with this law.

Upon completion of the procedure of transformation of the right of use into ownership of the buildable land, constructed cadastral parcel of buildable land along with the objects built on that parcel shall become the unique subject of the ownership (real estate unity), in a way that all existing rights and encumbrances on object, i.e. on separate part of object, which have existed from the moment of registration of the ownership shall be also transferred on that parcel, i.e. part of the cadastral parcel of the owner of that separate part, unless long term lease is constituted on that land.



## LAND FOR REGULAR USE AND REAL ESTATE UNITY

In case when exist more objects of different owners built on one cadastral parcel, real estate unity shall be established upon completion of the parcellation procedure, in a way that for each object after parcellation shall be formed the separate cadastral parcel.

In case when on one cadastral parcel is inscribed more co-users, i.e. co-owners, and only one of them is owner of the object built on that parcel, real estate unity shall be established after completion of the parcellation procedure for the cadastral parcel on which the object is built, while for the other parcels shall be formed as cadastral parcels of unconstructed buildable land.

We point out that parcellation in previous cases shall be performed based on the approval of the owner of the existing objects or land.

In case that the approval on project of parcellation is not obtained, the interested party may initiate the procedure for dissolution of co-ownership before competent court in which case after completion of the court procedure, based on legally valid court decision, parcellation shall be performed before competent Service for real estate cadaster.

Law on Conversion of Right of Use into Ownership of Buildable Land with a Fee prescribes the conditions for conversion of the right of use into ownership over developed and undeveloped buildable land (hereinafter referred to as: conversion), where the registered owner is Republic of Serbia, autonomous province or local self-government unit. Additionally, the said law prescribes the conditions for lease of the buildable land and all the other matters regarding the consequences of conversion.

In section about the conversion without a fee we gave the list of the persons to which the provisions of the Law on Conversion of Right of Use into Ownership of Buildable Land with a fee apply. Usually those are companies which have undergone privatization or bankruptcy.


The fee for conversion is equal to the market value of the land at the moment the request for conversion is submitted.

The amount of the fee is calculated by the competent body of local self-government unit in charge for property and legal affairs, in accordance with the regulation on determination of average price for square meter of matching real estate in relevant zones for purpose of taxation of property, enacted by the local self-government unit on the territory where the buildable land for which the conversion request is submitted.

The fee can be lowered in accordance with the provisions of the said law and regulations on state aid.

### **DOCUMENTATION ENCLOSED WITH THE REQUEST FOR CONVERSION**

- proof that the provisions of the Law on Conversion of Right of Use into Ownership of Buildable Land with a Fee apply to the submitter (for example, certificate of the Ministry of Commerce that the submitter previously have undergone the procedure of privatization or bankruptcy);

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- A person in a blue suit is shown from the chest up, with a semi-transparent grid overlaying their body. The background is a blurred cityscape with tall buildings under a blue sky.
- excerpt from real estate registry issued not later than 15 days prior to submission of the request in which the submitted shall be inscribed as the user of the buildable land;
  - copy of the plan for subject location or locations issued not later prior to submission of the conversion request;
  - information on location issued not later than 15 days prior to submission of conversion request;
  - certificate of the Agency for Restitution that the subject parcel or parcels is not subject of the restitution process or, if it is, that the natural restitution is not possible;
  - findings and opinion of the expert from the list of official court experts in case where the conditions for lowering the market price of the buildable land are fulfilled;
  - excerpt from the Agency for Business Registers issued not later than 15 days prior to submission of the request.

Depending of the details of each particular case, it is possible that for the successful completion of the conversion, the submitter shall be obliged to file additional documentation.

Provisions of the Law on Conversion of Right of Use into Ownership of Buildable Land does not apply to the buildable land which is by special law determined as the land which cannot be disposed from public ownership, i.e. land which is, by planning act in effect, intended for construction of the public purpose objects.

Also, provisions of this law do not apply to the property bought in public auction procedure, under market conditions, which includes ownership of an object with respective right of use of developed buildable land in accordance with special law, prior to agreement on sale of property, i.e. part of property of a company or other legal entity in accordance with the law which regulates privatization, prior to day the Law on Planning and Construction entered into force (in 2009), and property acquired after completion of the privatization process through an onerous legal transaction from the subject of privatization, prior to day the Law on Planning and Construction entered into force (in 2009), which includes ownership of objects and right of use of buildable land (in which cases the conversion is conducted without a fee).

#### **RIGHT TO REDUCTION OF THE MARKET VALUE OF BUILDABLE LAND**

The submitter shall be entitled to right to reduction of the market value of undeveloped buildable land if the buildable land is located at the territory of the local self-government unit which fails under category of underdeveloped local self-government units, i.e. local self-government unit with extremely low standard of living or high unemployment rate, based on the level of development of local self-government units for the previous year, in accordance with the regulations on regional development.

The amount of reduction of the market value, for local self-government units, is determined by the Government, in accordance with the regulations on state aid, within 30 days from the day the Law on Conversion of Right of Use into Ownership of Buildable Land enters into force.

The amount of the fee for conversion can also be reduced if the submitter files the findings of the construction expert listed in the official court experts list, which determine that the submitter had expenses regarding acquiring of the right of use for the cadastral parcel for which the request has been filed (expropriation costs, administrative transfer, remediation costs, revitalization costs and other costs).



The right to reduction of the market value of the buildable land has the submitter, regardless of the location of the land, if the subject of the request is developed buildable land, under conditions prescribed with this law. In this case, the amount of the fee is calculated by reducing the market value of the cadastral parcel for the amount of the market price of the land for regular use of the object.

In the process of conversion of the cadastral parcel of developed buildable land, the size of the land for regular use of the object is determined so as the overall size of the land under the objects built on that parcel, determined in the copy of the excerpt from the land register, is divided with the maximum size allowed by the land occupation index on that parcel, set by the planning document in effect, based on the information on location, and such result then multiplies with the overall size of the cadastral parcel. Size of the land under objects means the size of the land under all the objects built on the cadastral parcel, in accordance with the law (buildings, other objects, garages, grain tanks, reservoirs, internal roads etc.).

If on the cadastral parcel there are objects which aren't subject to inscription in the cadastral records of objects and rights (internal roads etc.), the land under such objects is also considered land for regular use, and the size of the land under objects is determined by the geodesy expert from the list of the official court experts.

#### **PROCEDURE OF CONVERSION BEFORE THE COMPETENT AUTHORITY**

After the request for conversion is submitted, the competent authority determines whether all the required documents are enclosed and ex officio acquires the certificate of the Agency for Restitution that the parcel is not subject of the restitution.

If the competent authority finds that the required documents aren't enclosed, it will order the submitter to file additional documents within 5 days from the submission of the request. The submitter must file the documentation within 10 days from the receipt of the order. If the submitter fails to file additional documents, the competent authority shall reject the request.

If the competent authority finds that all the required documents are enclosed, it shall determine whether the conditions for reduction of the market value and immediately, not later than three days, ex officio acquires the assessment of the market value of the subject buildable land from the competent tax authority. After the assessment is acquired, the competent authority, within three days, informs the submitter about the amount of the fee and orders the submitter to file a proposal on how the payment shall be conducted.

If the conditions for reduction of the market value are met, the amount of the fee shall be determined so as the assessed market value of the buildable land shall be reduced for the amount of reduction.

#### **PAYMENT OF THE FEE FOR CONVERSION OF RIGHT OF USE INTO OWNERSHIP**

The conversion fee can be paid at once or in 60 equal installments.

If the fee shall be paid at once, the submitter is entitled to reduction in the amount of 30% of the fee.

If the payment shall be done in installments, the submitter is required to submit a collateral (irrevocable bank guarantee, mortgage, lien over movables etc.).

#### **COMPLETION OF THE CONVERSION PROCESS**

After the decision on conversion become final, the conditions for registration of ownership of the land.

Along with the request for registration, the submitter encloses the valid decision on conversion and the proof that the payment shall be completed or, in case of payment in installments, the certificate of the competent authority that the first installment has been paid.

The cadastre registers the ownership within seven days from the day the request is submitted.

If subject of registration is the ownership of developed land, the cadastre shall ex officio register the mortgages and other encumbrances over the object(s) and buildable land subject to conversion in order of registration of such encumbrances.



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