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LAW OFFICE

EXPROPRIATION OF REAL ESTATE

**And obtaining compensation for
expropriated real estate**

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The Constitution of the Republic of Serbia guarantees peaceful enjoyment of legally acquired property right. However, in certain situations, the need of the public interest leads to the need to limit those rights.

As it is a matter of restricting one of the basic human rights, the Constitution of the Republic of Serbia prescribed necessary conditions under which the property right can be taken away or limited, and these are:

- Determining the existence of public interest (public interest must be determined by law or based on law),
- Payment of compensation which cannot be less than the market price.

Such a public interest as a result of which the owner or holder of a property right may be deprived or limited of the property right to immovable property may be determined, i.a., in the expropriation procedure regulated by the Expropriation Act ("Official Gazette of the RS", No. 53/1995, 23/2001 (FCC), 20/2009, 55/2013-58 (CC), 106/2016 - authentic interpretation, hereinafter: the Act).

I WHAT IS EXPROPRIATION?

Expropriation is an administrative procedure in which private property or certain property rights (such as the right of servitude, the right to use land, etc.) are confiscated from the owner of real estate due to existence of the public interest for construction, reconstruction, or rehabilitation of facilities in education, health, transport, energy and communal infrastructure as well as other facilities of public interest.

As expropriation represents the deprivation or restriction of private property rights, the Act stipulates the obligation of the expropriation beneficiary to pay compensation to the former owner of the real estate for the expropriated real estate. The basic feature of this expropriation compensation is that it must correspond to the expropriated real estate market price.

The object of expropriation

The object of expropriation is real estate in private ownership or real estate in public ownership on which there is a right to use in favor of natural and legal persons, and these can be:

- Land (expropriation of construction, agricultural and forest land, expropriation of orchards, nurseries, etc.);
- Buildings (expropriation of houses, flats, business facilities, etc.);
- Other structures (expropriation of garages, barns, sheds, silos, swimming pools, ponds, etc.)

Types of expropriation

The Law recognizes two basic types of expropriation, which are:

- **Complete expropriation** (in which case the ownership of the previous owner of the real estate is revoked) and
- **Incomplete expropriation** (in which case the right of ownership of the real estate owner is limited by establishing easement on the real estate or by leasing the land for a certain period).

II EXPROPRIATION PROCEDURE

Determination of public interest for conducting expropriation procedure must take place before expropriation procedure itself. Public interest is determined by law, or by the Decision of the Government of the Republic of Serbia adopted under the law. When determining public interest for expropriation, the expropriation beneficiary is to be determined as well.

For example, the Government of the Republic of Serbia, by its Decision, determined the existence of public interest for the expropriation of real estate to construct a part of the E-763 highway on the section between Preljina and Požega. As expropriation beneficiary is designated public enterprise Putevi Srbije, as an enterprise in charge of the construction of the highway.

After determining the public interest, the beneficiary of expropriation submits a proposal for expropriation of real estate to the municipality where the real estate is located. After the proposal is submitted in this way, the municipal administration conducts the procedure according to the proposal for expropriation.

In the expropriation procedure, the competent municipal administration body is obliged to examine whether the expropriation beneficiary has submitted all the necessary documents for the expropriation of real estate, but also to conduct a hearing procedure of the owner of real estate, so all necessary facts relevant to the expropriation procedure can be determined.

In case that the expropriation beneficiary submitted a proposal only for expropriation of a part of a real estate, and if by expropriation of a part of the real estate, the owner of the property would lose interest in using the remaining part of the real estate, the owner can submit the request for expropriation of the remaining part of the real estate. The competent authority is obliged to inform the owner of real estate about this possibility and the deadline for submitting such a request.

For example, if expropriation of a part of the field is conducted to construct the road, and if the remaining part of the field is barren or hardly accessible, the owner of the field can submit the request that the remaining part of the field is expropriated as well.

Following the procedure of examining the proposal for expropriation, the competent authority issues a Decision by which adopts the proposal and expro-

priates real estate or a Decision by which it refuses the request for expropriation. Parties in this procedure have the right to appeal to this decision in front of the Ministry in charge of finance.

When the Decision on expropriation becomes final, the beneficiary of expropriation becomes the new owner of the expropriated real estate, while the former owner is now entitled to compensation for expropriated real estate.

Having in mind that the procedure of expropriation of real estate restricts the rights of the property owners, the Act prescribes that all costs of the expropriation procedure shall be borne by the beneficiary of expropriation.



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III PROCEDURE FOR DETERMINING COMPENSATION FOR EXPROPRIATED PROPERTY

Procedure for determining the amount of compensation for the expropriated property is conducted after the Decision on expropriation becomes final. In this procedure, the previous owner of the property shall exercise his/her right to compensation for expropriated property. This compensation, as said, needs to reflect the market, i.e. real property value of the property.

Their right to market compensation for expropriated property previous owners can exercise in one of the following two ways:

- By reaching an agreement about the amount of compensation for the expropriated property with expropriation beneficiary or by
- Determining the amount of the compensation for the market value of the property in a court procedure.

Determining the compensation of the market price of the expropriated real estate by mutual agreement

The former owner can initially exercise his/her right to compensation for expropriated real estate in a procedure in front of the municipal authorities, by agreeing on the amount and the scope of compensation for expropriated real estate with the expropriation beneficiary.

The municipal authority is obliged to start this procedure when the Decision on expropriation becomes final, i.e. municipal authority is obliged to without delay schedule and conduct a hearing of the parties to determine compensation for expropriated real estate. Also, the expropriation beneficiary is obliged to submit his proposal on the type (amount of money or replacement) and the amount of compensation for expropriated real estate within 15 days since the Decision on expropriation becomes final, which proposal is later delivered to the previous owner for a response.

The previous owner can agree with the received offer if it is appropriate or can ask for a higher amount of compensation if the offered amount does not correlate to the market value of the property.

Should parties fail to reach an agreement within two months since the Decision on expropriation became final, the final decision about this matter

shall be given by a competent court. This will most likely be the case if the offer of the expropriation beneficiary is lower than the market value of the real estate, which is common in practice.

In the end, it is important to mention that, under the Act, all expenses in the procedure for reaching the agreement on the compensation for expropriated real estate conducted in front of the municipal authority are to be borne by the expropriation beneficiary. By this solution, the lawmaker enabled previous owners to actively participate in the process, and to exercise their rights, regardless of their solvency.

Determining the compensation of the market price of the expropriated real estate in court proceedings

If within two months from the day the Decision on expropriation becomes final, the parties do not conclude an agreement on the scope and amount of compensation for expropriated real estate, the competent municipal body shall ex officio send the final Decision on expropriation with its accompanying documentation to the competent court to determine compensation for expropriated real estate in the amount of the market price of the real estate.

In case the municipal body does not send the necessary documentation to the court immediately after the deadline, the beneficiary of the expropriated real estate and the former owner of the expropriated real estate can send it to the court as well.

The compensation is determined in a non-litigious court procedure before the court that is competent for the territory where the expropriated real estate is located.

The procedure for determining compensation in court proceedings is defined as urgent and has an advantage in resolving in comparison to regular court proceedings.

IV Specifics regarding determining the amount of compensation for expropriated real estate

When determining the market value of the expropriated real estate, i.e. when assessing whether the offer of the expropriation beneficiary is appropriate, it is necessary to pay attention to whether the legal parameters for determining the amount of compensation have been complied with.

Those parameters include not only the type of expropriation but also the status of the real estate that was the object of expropriation. They relate to whether it was:

- Complete expropriation or partial expropriation of real estate;
- Expropriation of agricultural or construction land;
- Expropriation of vineyards, orchards, nursery garden or forests;
- Expropriation of land without a building or under a building;
- Expropriation of an apartment, residential building, or other structures;
- Expropriation of the land in the state or public ownership with the right to use legally reserved for natural persons, etc.

All those and other facts are of importance for proper determination of the market value of the real estate and after that the amount of compensation, regardless of the fact whether compensation is determined by an agreement or in a court procedure.

Contact >



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V FACTUAL EXPROPRIATION OF REAL ESTATE

In practice, and especially in smaller places, it is not uncommon for "expropriation" to be carried out without a Decision on the expropriation issued by the competent authority, i.e. by a factual usurpation of real estate. In those cases, it is not an expropriation in the sense of the Act on Expropriation, but the owners of real estate whose property has been usurped or whose property rights were limited can still exercise their right to compensation for "factually expropriated real estate". This right may be exercised exclusively in court proceedings before a competent court.

For example, if on a property in private ownership without consent of the owner and conducted expropriation procedure, the electrical transmission line is placed, or over a part of the land a road is being constructed, the owner of the property has the right for compensation for this occupation of his/her property.

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