

## **LAW**

### **on Real Estate Sale and Lease Brokerage**

*Official Gazette of the Republic of Serbia* No. 95 of 31 October 2013, 41 of 31 May 2018, 91 of 24 December 2019

#### **I. INTRODUCTORY PROVISIONS**

##### **Scope**

###### Article 1

This Law shall govern the requirements for and the manner of performing real estate sale and lease brokerage activities, as well as supervision of compliance with this Law.

##### **Application of Other Laws**

###### Article 2

Any issues not provided for in this Law shall be governed, *mutatis mutandis*, by the provisions of the law governing contracts and torts.

##### **Definitions**

###### Article 3

As used herein, the following terms shall have the meanings set forth below:

- 1) *real estate sale and lease brokerage* means an activity involving the finding of a counterparty and connecting them to the principal to negotiate the execution and execute a real estate sale or lease agreement, performed against a fee (hereinafter referred to as "brokerage");
- 2) *broker* means a company or sole trader established in the Republic of Serbia and entered in the Register of Brokers;
- 3) *Register of Brokers* means a register maintained in writing and electronically by the ministry in charge of trade affairs (hereinafter referred to as the "Ministry").

#### **II. REQUIREMENTS FOR THE PURSUIT OF BROKERAGE ACTIVITY**

##### **Entry in the Register of Brokers**

###### Article 4

Entry in the Register of Brokers shall be done pursuant to an application submitted by the person asking to be entered in that register (hereinafter referred to as the "applicant").

The applicant may commence with the brokerage activity on the date of passing of a decision on entry in the Register of Brokers, which shall be considered the date of entry in that register.

A decision on entry in the Register of Brokers shall be passed by the minister in charge of trade affairs (hereinafter referred to as the "Minister"), within 30 days of the date of applying.

### **Requirements for entry in the Register of Brokers**

#### **Article 5\***

**Requirements for entry in the Register of Brokers shall be as follows:\***

- 1) The sole trader or at least one natural person forming the company, or another member of the company, or at least one full-time employee, must have passed the qualifying examination referred to in Article 11 of this Law;\***
- 2) A valid liability insurance contract executed in accordance with Article 13 of this Law;\***
- 3) Appropriate office space in accordance with Article 14 of this Law;\***
- 4) The applicant must not have been served with an injunction referred to in Article 32 paragraph 2 and Article 33 paragraph 4 of this Law which is in force at the time of applying;\***
- 5) The founder or owner, beneficial owner, affiliate, member of a management body of the company registered to perform the activities of a real estate sale and lease agency as its predominant business activity, the company's representative, member of the company's management body or natural persons who have passed the qualifying examination referred to in Article 11 of this Law, the sole trader or sole trader's manager, if the sole trader delegated management operations to a legally competent natural person, must not have been fined, if a legal entity, or sentenced to imprisonment, if a natural person, for a criminal offence in the Republic of Serbia or a foreign country for a grave or repeated breach of anti-money laundering and counter-financing of terrorism legislation during the term of an injunction barring them from performing specific activities that constitute the predominant business activity of a real estate sale and lease company or during the term of an injunction barring the responsible officer from performing specific activities that constitute the predominant business activity of a real estate sale and lease company or during the term of an injunction barring the responsible officer for discharging specific duties at a real estate agency registered to perform the activities of a real estate sale and lease agency as its predominant business activity.\***

**An affiliate within the meaning of item 5) of this Article means:\***

**1) Any natural person who is a member of a management body or other responsible officer of a legal entity where the person concerned holds a managerial post or is the beneficial owner of such legal entity;\***

**2) Any natural person who is the beneficial owner of a legal entity where the person concerned holds a managerial post;\***

**3) Any natural person who shares beneficial ownership of the same legal entity with the person concerned.\***

**If the evidence of no criminal record referred to in item 5) of this Article cannot be obtained for justified reasons, the persons referred to in item 5) of this Article may provide a sworn statement that they have not been convicted of a criminal offence and are not members of an organised criminal group. The Ministry may demand of the persons referred to in item 5) of this Article at any time to present evidence of no criminal record or directly request such evidence from a competent authority.\***

*\*Official Gazette of the Republic of Serbia number 91/2019*

### **Data entered in the Register of Brokers**

#### Article 6

Data on the following shall be entered and maintained in the Register of Brokers:

1) Brokers (business name, address of head office and branch, tax identification number, registration number etc.);

**2) Persons performing broker operations who have passed the qualifying examination referred to in Article 11 of this Law;\***

3) Address of the office space referred to in Article 14 of this Law;

4) Any imposed injunctions referred to in Article 32 paragraph 2 and Article 33 paragraph 4 of this Law;\*

**5) Company's member, beneficial owner, sole trader, company's representative and sole trader's manager, if the sole trader delegated management operations to a legally competent natural person.\*\***

*\*Official Gazette of the Republic of Serbia number 41/2018*

*\*\*Official Gazette of the Republic of Serbia number 91/2019*

### **Public Nature of the Register of Brokers**

#### Article 7

The Register of Brokers shall be public and all persons may access free of charge all data maintained in the Register of Brokers without any restrictions.

The Ministry shall publish the Register of Brokers on the Ministry's website.

## **Change of Data in the Register of Brokers**

### Article 8

Brokers shall report any change in the data recorded in the Register of Brokers within seven days of the date of their occurrence, to have the change entered in the Register of Brokers.

The Ministry shall change data in the Register of Brokers *ex officio* on the basis of data available to government authorities within their official records, as well as on the basis of data obtained through supervision carried out under this Law.

## **Excerpts from Register of Brokers**

### Article 9

Pursuant to a request from an interested party, the Ministry shall issue an excerpt from the Register of Brokers, within three days of receipt of such request.

## **Expungement from the Register of Brokers**

### Article 10\*

**The broker shall be expunged from the Register of Brokers:\***

- 1) If it no longer meets any of the requirements for entry in the Register of Brokers set forth in Article 5 of this Law;\***
- 2) If the entry in the Register of Brokers was made on the basis of false data;\***
- 3) If the broker decides to cease performing the activity of a real estate sale and lease agency or if it is dissolved in accordance with the law;\***
- 4) If it breaches the anti-money laundering and counter-financing of terrorism legislation;\***
- 5) Upon personal request.\***

**A decision on expungement from the Register of Brokers shall be passed by the Minister, on the basis of data contained in public records, as well as data found through supervision.\***

**The decision referred to in paragraph 2 of this Article shall be final and may be challenged in an administrative dispute, in accordance with the law.\***

*\*Official Gazette of the Republic of Serbia number 91/2019*

## Qualifying examination

### Article 11

Qualifications for performing broker operations shall be determined by means of a qualifying examination (hereinafter referred to as the "qualifying examination").

A natural person taking the qualifying examination must have a permanent place of residence in the territory of the Republic of Serbia, must have at least Level 4 qualifications **and must not have been sentenced to imprisonment for a criminal offence committed in the Republic of Serbia or in a foreign country**\*

A natural person who passes the qualifying examination shall be issued with a certificate of completion of the qualifying examination.

The Ministry shall keep records of issued certificates referred to in paragraph 3 of this Article.

Funds collected from payments for the taking of the qualifying examination shall constitute revenue for the budget of the Republic of Serbia.

*\*Official Gazette of the Republic of Serbia number 91/2019*

## **Prohibition of Unauthorised Brokerage Operations and Conflict of Interest**

### Article 12

Any legal entities or natural persons not entered in the Register of Brokers shall be prohibited from performing broker operations.

Natural persons who have not completed the qualifying examination shall be prohibited from performing broker operations for of a broker.

A natural person who has not completed the qualifying examination shall not be allowed to simultaneously perform broker operations for two or more brokers or to provide services in connection with a specific broker transaction or to perform any other actions aimed at connecting persons for the purpose of real estate sale or lease, except where this is done with the written consent of all brokers involved in the transaction and provided that the principals and the prospective parties in the brokered transaction with the principals have been informed of it.

If a natural person who has completed the qualifying examination violates the prohibition set forth in paragraph 3 of this Article, the injured broker may claim damage compensation.

## **Liability Insurance Agreement**

### Article 13

The broker shall have a valid liability insurance agreement with an insurance company established in the Republic of Serbia covering any damage the principal may sustain as a result of failure to perform contractual obligations under a brokerage agreement referred to in Article 15 of this Law, as well as the obligations set forth in Article 16 of this Law.

The sum insured for the damage the broker may cause to the principal while providing broker services shall be minimum 15,000.00 euros in dinar equivalent per insured event, or minimum 45,000.00 euros in dinar equivalent as a total amount covering all claims in a single insurance year.

## **Office Space and Equipment**

### Article 14

The broker shall perform brokerage operations in a suitable office space with appropriate equipment, which shall meet the minimum technical requirements and which shall be functionally separated from residential premises.

## **III. MANNER OF PERFORMING BROKER OPERATIONS**

### **Brokerage Agreement**

#### Article 15

Brokerage operations shall be carried out under a real estate sale or lease brokerage agreement (hereinafter referred to as "brokerage agreement"), which shall be entered into between the principal and the broker.

The principal may be the seller, the buyer, the lessor or the lessee, or the attorney-in-fact of any of those persons.

The brokerage agreement shall be entered into in writing and/or electronically, in accordance with the law governing electronic commerce.

In addition to the rights and responsibilities of the broker and the principal, a brokerage agreement shall contain in particular information on the broker and the number of its registration with the Register of Brokers, the principal, the type and key elements of the transaction brokered by the broker, the amount, mode of payment and payment term of the broker's fee, the term of the agreement and the type and amount of costs of additional services, if provided for by the agreement.

### **Broker's Obligations**

#### Article 16

The broker shall, depending on the type of the brokered transaction, undertake to perform the following:

- 1) Make efforts to find and connect to the principal a person aiming to execute the transaction brokered under the brokerage agreement;
- 2) Give the principal an unbiased opinion on the price the real estate may command or the amount of lease payments that could be charged for it depending on its characteristics, the market situation and other relevant circumstances;
- 3) Examine documents presented as evidence of title or other right in rem to the real estate the sale or lease of which is brokered and warn the principal in particular of the following:
  - (1) Potential risks relating to the recording of the property in real estate registers;
  - (2) Any rights or encumbrances on the registered property;
  - (3) The existence of any right of first refusal or restrictions on transactions under special regulations;
- 4) Perform the necessary actions to present the real estate in the market, advertise the sale and/or lease of the real estate by appropriate means and perform all other actions provided for in the brokerage agreement that go beyond the usual presentation, in respect of which the broker shall be entitled to charge separate expenses quoted in advance;
- 5) Arrange for showings of the real estate;
- 6) Broker negotiations and make efforts to successfully close the deal with the execution of an agreement;
- 7) Keep the principal's personal data and, if ordered by the principal in writing, keep as commercial secret any information concerning the real estate the sale and/or lease of which it brokers or in connection with that real estate or the brokered transaction;
- 8) Inform the principal of any circumstances relevant for the transaction of which the broker is or should be aware.

### **Records of Brokerage Operations**

#### Article 17

The broker shall keep records of brokerage operations.

The records referred to in paragraph 1 of this Article shall contain information on brokerage agreements referred to in Article 15 of this Law and sub-brokerage agreements referred to in Article 29 of this Law, including in particular information on the principal, the real estate the sale or lease of which is brokered, the outcome of brokering and the broker's fee.

## **Advertising**

### Article 18

When advertising the brokered sale and/or lease of real estate in the media, in its office space or elsewhere where advertising the sale and/or lease of real estate is permitted, in addition to the information on its business name and the number under which it is registered with the Register of Brokers, the broker shall also advertise information on the price, the location, the square footage and the structure of the real estate.

It is prohibited to advertise the sale and/or lease of real estate for the sale and/or lease of which the broker has not signed a brokerage agreement or a sub-brokerage agreement.

## **Due Diligence in Transactions**

### Article 19

When performing brokerage operations and other actions in connection with the brokered transaction, the broker must act with the diligence of a prudent businessperson.

## **Right to Broker's Fee**

### Article 20

The broker shall acquire the right to the broker's fee at the time of execution of the brokered agreement, unless the broker and the principal agree that the right to the broker's fee is to be acquired at the time of execution of a preliminary agreement brokered by the broker.

The broker may not demand partial payment of the broker's fee in advance, i.e. before the execution of the brokered preliminary agreement or agreement in accordance with paragraph 1 of this Article.

The broker may charge the costs of any additional services in connection with the brokered transaction if it is explicitly provided for in the brokerage agreement.

After termination of the brokerage agreement, the broker shall be entitled to compensation in accordance with the provisions of Article 27 paragraphs 5, 6 and 7 of this Law, unless agreed otherwise.

The broker or the sub-broker shall not be entitled to the broker's fee if it executes the brokered agreement with the principal on its on behalf, as a party, or if such agreement with the principal is executed by a person who has passed the qualifying examination and performs broker operations in the employ of the broker or the sub-broker.



## **Invoice for Broker's Services**

### Article 21

The broker may issue an invoice for the services provided in accordance with the brokerage agreement.

## **Authorisation to Execute Real Estate Sale or Lease Agreement**

### Article 22

The broker may, if specifically authorised to do so, execute a preliminary agreement or agreement for the sale of real estate or for the lease of real estate on behalf and for the account of the principal.

The authorisation referred to in paragraph 1 of this Article shall be issued separately in the form provided for by the Law.

## **Principal's Obligations**

### Article 23

The principal shall, depending on the type of the brokered transaction, undertake to perform the following:

- 1) Inform the broker of all circumstances relevant for the brokering;
- 2) Present to the broker for inspection original documents demonstrating the principal's title to the property subject to the transaction and warn the broker of any existing registered and unregistered encumbrances on the real estate;
- 3) Allow the broker and the person interested in executing the transaction to view the real estate, in the agreed manner and at the agreed time;
- 4) Inform the broker of all important data concerning the real estate, including in particular accurate data on the price, the location, the structure of the real estate etc.;
- 5) Provide the broker with certified copies of all documents demonstrating the title to the real estate subject to brokering services when executing the brokered transaction, whether the preliminary agreement or the main agreement, in connection with the sale or lease of the real estate;
- 6) Pay to the broker the agreed broker's fee and, if specifically agreed, compensate the broker for other expenses incurred during brokering;
- 7) Inform the broker of any changes concerning the brokered transaction, including in particular changes concerning rights to the real estate, time schedule and the price, in each case within three days of the date of such change.

If the principal issues a brokerage order or enters into a brokerage agreement in violation of the principles of diligence and honesty, it shall compensate the

broker for the expenses incurred during brokering, which shall not exceed the agreed broker's fee for the brokered transaction.

### **Nullity of the Obligation to engage in Negotiation**

#### Article 24

The principal shall not be under an obligation to engage in negotiation for the execution of the brokered transaction with a person found by the broker or execute the brokered transaction and any provision of the brokerage agreement stipulating otherwise shall be null and void.

### **Anonymous Principal**

#### Article 25

The broker who brokers for a principal who wishes to remain anonymous shall refrain from disclosing the principal's identity, in accordance with the requirements set forth in the brokerage agreement, by the time of execution of the brokered transaction at the latest.

A clause providing for the principal's anonymity must be explicitly stipulated.

### **Exclusive Brokerage**

#### Article 26

The principal may undertake, by explicitly stipulating a clause on exclusive brokerage, not to hire another broker during an agreed period to broker in connection with a specific real estate.

If the principal executes a transaction in connection with the real estate referred to in paragraph 1 of this Article brokered by another broker during the term of the exclusive brokerage clause, it shall pay the agreed broker's fee as damage compensation to the broker which the principal hired under exclusive brokerage.

The broker shall specifically advise the principal of the meaning and legal consequences of the exclusive brokerage clause referred to in paragraph 1 of this Article.

### **End of Brokerage Agreement**

#### Article 27

The brokerage agreement shall end upon expiry of its term, upon execution of the brokered transaction or upon termination in writing or electronically, in accordance with the law governing electronic commerce.

Unless agreed otherwise, the brokerage agreement shall be entered into for a period of one year.

Termination of the brokerage agreement does not have to be substantiated and shall become effective at the time of delivery of a termination notice to the broker.

Termination of the brokerage agreement shall be governed, *mutatis mutandis*, by the provisions of the law governing contracts and torts pertaining to revocation of a brokerage order.

The principal shall compensate the broker for incurred expenses only if it was expressly agreed that such expenses are to be borne by the principal regardless of the success of brokering.

If, after the end of the brokerage agreement through termination by the principal, but in any case within not more than one month of the date of end of the agreement, the principal executes a transaction as a direct result of brokering by the broker before the end of the brokerage agreement, the principal shall pay the full amount of the agreed broker's fee to the broker, unless stipulated otherwise in the brokerage agreement.

If, subject to the condition and within the period set out in paragraph 6 of this Article, the principal executes a transaction that is substantially a result of brokering by the broker before the end of the brokerage agreement, the principal shall pay the broker a proportional share of the broker's fee, unless stipulated otherwise in the brokerage agreement.

### **General Terms and Conditions**

#### Article 28

The broker shall determine its general terms and conditions in accordance with this Law and other regulations.

The general terms and conditions shall set out in particular:

- 1) The amount of the broker's fee or the manner of determining the amount of the broker's fee;
- 2) A description of the tasks the broker is required to perform in exchange for the broker's fee;
- 3) The type and amount of expenses for any additional services.

The broker shall visibly post its general terms and conditions in its office space and they shall be incorporated in the brokerage agreement by reference.

### **Sub-Brokerage Agreement**

#### Article 29

Under a sub-brokerage agreement, the broker may assign its rights and obligations under the brokerage agreement, fully or in part, to another broker, if the principal expressly agreed to it in the brokerage agreement.

The sub-brokerage agreement shall be entered into in writing and/or electronically, in accordance with the law governing electronic commerce.

The sub-brokerage agreement shall provide for the manner of and conditions for assigning the rights and obligations referred to in paragraph 1 of this Article, payment of the broker's fee and termination of the agreement.

The broker shall provide the principal with a copy of the sub-brokerage agreement within three days of execution of such agreement.

### **Powers**

#### Article 30

The Minister shall lay down in detail:

- 1) The form, content and manner of keeping the Register of Brokers referred to in Article 3 paragraph 1 item 3) of this Law;
- 2) The form of request for entry in the Register of Brokers referred to in Article 4 paragraph 1 of this Law;
- 3) The form of excerpt from the Register of Brokers referred to in Article 9 of this Law;
- 4) The form, content and manner of keeping the records referred to in Article 11 paragraph 4;
- 5) Minimum technical requirements for the office space and equipment referred to in Article 14 of this Law;
- 6) The form, content, manner of keeping and period of keeping the records of brokerage referred to in Article 17 of this Law.

The Minister shall, subject to prior approval by the minister in charge of finance affairs, lay down in detail the curricula and the manner of organisation of the qualifying examination, the amount of the fee for taking the qualifying examination, the amount of the fee for the work of members of the committee and the content and the form of the certificate of completion of the qualifying examination referred to in Article 11 of this Law.

### IV. SUPERVISION

#### Article 31

Compliance with this Law and regulations passed pursuant to this Law shall be supervised by the Ministry.

Inspections shall be conducted by the Ministry through market inspectors, pursuant to powers provided for in the law governing trade.

## V. PENAL PROVISIONS

### **Infringements and Injunctions**

#### Article 32

A fine in the amount of between two times and five times the amount of the usual broker's fee shall be charged for an infringement to a legal entity, sole trader, natural person or responsible officer of a legal entity if they perform brokerage operations in violation of the prohibition provided for in Article 12 paragraph 1 of this Law.

In addition to the fine provided for in paragraph 1 of this Article, a legal entity, sole trader or natural person may also be served with an injunction banning them from brokering the sale or lease of real estate for a period of between one and three years, as well as an injunction ordering the judgment to be made publicly available.

#### Article 33

A fine in an amount between RSD 100,000.00 and RSD 500,000.00 shall be charged to a legal entity for infringement if it:

- 1) Fails to report or fails to timely report a change in date in accordance with Article 8 paragraph 1 of this Law;
- 2) Employs or hires for brokering without an employment contract a person in violation of the prohibition set out in Article 12 paragraph 2 of this Law;
- 3) Operates in an office space that does not meet the requirements referred to in Article 14 of this Law;
- 4) Performs brokerage operations without entering into a brokerage agreement in accordance with Article 15 of this Law;
- 5) Fails to keep or fails to accurately and fully keep records of brokerage in accordance with Article 17 of this Law;
- 6) Posts an advertisement in connection with the sale and/or lease of real estate in violation of Article 18 of this Law;
- 7) Earns the broker's fee in violation of Article 20 paragraphs 2 and 5 of this Law;
- 8) Fails to comply with the obligation set forth in Article 26 paragraph 3 of this Law;
- 9) Fails to post its general terms and conditions in the manner set out in Article 28 paragraph 3 of this Law.

For the offences referred to in paragraph 1 of this Article, a sole trader shall be charged a fine in an amount between RSD 50,000.00 and RSD 500,000.00.

For the offences referred to in paragraph 1 of this Article, the responsible officer of a legal entity shall be charged a fine in an amount between RSD 10,000.00 and RSD 100,000.00.

In addition to the infringement penalty provided for in paragraph 1 items 2), 4) and 5) of this Article, a legal entity or sole trader may also be served with an injunction banning them from brokering the sale or lease of real estate for a period of between one and two years, as well as an injunction ordering the judgment to be made publicly available.

## VI. TRANSITIONAL AND FINAL PROVISION

### Article 34

Secondary legislation passed under the powers provided for in this Law shall be passed within six months of the date of entry of this Law into force.

### Article 35

This Law shall take effect on the eighth day of its publishing in the *Official Gazette of the Republic of Serbia*, except the provision of Article 11, which shall take effect 12 months after the date of entry of this Law into force, and the provisions of Articles 4–10 and Article 13, which shall take effect 18 months after the date of entry of this Law into force.

### **PROVISIONS NOT INCLUDED IN THE “CONSOLIDATED TEXT” OF THE LAW**

*Law on Amendments and Supplements of the Law on Real Estate Sale and Lease Brokerage: Official Gazette of the Republic of Serbia number 91/2019-84*

### **Article 5**

**This Law shall come into force on the eighth day of its publishing in the *Official Gazette of the Republic of Serbia* and shall take effect as of 1 January 2020.**