

Advokatska kancelarija TSG TOMIĆ SINDJELIĆ GROZA informiše o aktuelnostima u radu kancelarije i zakonodavnom reljefu RS / Die Rechtsanwälte TSG TOMIĆ SINDJELIĆ GROZA informieren über aktuelle Themen der Kanzlei und den Rechtsrahmen der RS / The aim of the TSG Newsletter is to help our clients and friends understand trends and legal developments in various areas of the law in RS / Юридическая контора ТСГ ТОМИЧ СИНДЖЕЛИЧ ГРОЗА информирует о самых актуальных событиях, о работе конторы и законодательном рельефе РС / Glavni urednik/Chefredakteur/Editor-in-Chief/Главный редактор: Ljubica Tomić / Prevodi/Übersetzungen/Translations/Переводы: Mirjana Zdravković, Vojislava Katić, Viktorija Topalović / Lektor/Lektor/Proofreader/Лектор: Ivana Radović, Vesna Gašić, Magda Braun

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### **What changes are introduced by the new Law on Enforcement and Security?**

The new Serbian Law on Enforcement and Security will come into force on 1 July 2016, bringing numerous and important changes to the enforcement procedure. The main reasons for adopting the new Law are poor efficiency in enforcement procedures, large number of pending backlog cases in courts, lack of unified court practice, and general dissatisfaction of creditors (as well as debtors) with the overall approach to the execution of enforcement.

Under the new Law, the public enforcement officer, rather than the court, will be responsible for execution of enforcement in most cases, which is the most important change introduced by the Law, in terms of concept. The court will have the sole competence in the execution of enforcement only in four types of enforcement procedures: enforcement of joint sale of movable and immovable property, enforcement of obligation to act, refrain from acting or suffer action, enforcement of decisions regarding family matters and reinstating an employee to work.

The most important change to the enforcement proceedings lies in the introduction of the appeal. The new Law provides for the appeal as the main legal remedy in challenging the decision by the court or a public enforcement officer. The objection as legal remedy is still applicable, although somewhat limited in scope; it is available against an enforcement ruling based on an authentic document and against procedural decisions rendered by the court or a public enforcement officer during the proceedings. The new Law extends the period for filing the appeal and objection to eight days (instead of five working days as previously envisaged).

The new Law provides that the appellate court, in denying the appeal against the enforcement decision, should overrule the contested decision and thus resolve the case, which should allow for a more efficient and expedient enforcement procedure. Thus, the appellate court may not reverse the first-instance decision and refer the case back to the first-instance court; the decision rendered by the appellate court is considered final.

The Law abolishes the statements of assets which have proved in practice to be an inefficient means of acquiring data on debtor's assets. Instead, the Law enjoins the state authorities to provide, free of charge, the requested data on enforcement debtor and his assets (data on the amount of salary and other regular income, data on immovable property, company shares, motor vehicles and other movable property, life and property insurance, etc) to the court and public enforcement officer, as well as enforcement creditor and his lawyer.



It is worth noting that the Law introduces two new types of executive titles (a public notary document having the power of the executive title and an agreement on resolving dispute through mediation), and one new type of authentic document (extract from business books for claiming subscription fee for the public service broadcaster).

The new Law allows for postponement, under strictly defined legal provisions, of the enforcement, which was not the case earlier. Thus, a public enforcement officer will be able to issue a decision on postponing enforcement, upon a motion by: (1) enforcement creditor, (2) enforcement debtor, (3) subject to agreement between enforcement creditor and enforcement debtor or (4) upon a motion by a third party.

The fine, as a measure levied by the court on the parties to the proceedings for failure to comply with the order of the court or a public enforcement officer, remains the same, the difference being that the fine may be replaced with a term of imprisonment of up to 60 days. Furthermore, the Law envisages for the first time that the court may order the police to issue a warrant of arrest for an enforcement debtor avoiding the execution of enforcement.

There is a number of important changes involving the enforcement on immovable property, notably the following:

1. In case of enforcement on immovable property under lease, in the event of sale of such immovable property, the lease agreement shall remain in force and effect only if registered as annotation (zabeležba) with the real estate cadastre before the date of the earliest enforcement decision.
2. Once the annotation of enforcement decision has been registered, no change to the title to the immovable property may be entered into the real estate cadastre if such change is based on any disposal of the immovable property made by the debtor, regardless of the date of such disposal.
3. If, once the pledge has been created on immovable property, the owner of such property should change, the pledge creditor who has initiated the enforcement procedure shall identify in the motion for enforcement the pledgee as the pledge debtor (and not the new owner of the pledged immovable property). In this way, the new Law will remove the vagueness surrounding this issue in practice.
4. The immovable property may not be sold for less than 70% of the appraised value (instead of 60% under the current Law) at the first public auction, and for less than 50% of the appraised value (instead of 30% under the current Law) at the second public auction. The same rules apply to the public auction of movable property.

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The legal community has paid particular attention to a completely new enforcement mechanism, namely the joint sale of the immovable property and the movable property located at or inside the immovable property or functionally associated with it. Such sale may take place only at a public auction (not through direct agreement), and the sole competence for the execution of enforcement lies with the court (rather than with the public enforcement officer).

Under the provisions of the Law governing enforcement on movable property, the period allowed to enforcement creditor to file a motion for another means of enforcement in case of unsuccessful inventory of debtor's movable property has been significantly reduced, from 45 to only 8 days.

Another change to be implemented, fully justifiable, is applying the joinder of enforcement procedures to movable property. Thus, once inventory and appraisal of movable property has been performed, no separate enforcement procedure shall be allowed for satisfaction of another claim on the same property; rather, the new enforcement creditor shall join the ongoing enforcement procedure.

Finally, please note that all enforcement creditors in cases where the enforcement decision was rendered before 17 May 2012, need to state, between 1 May 2016 and 1 July 2016, whether they choose further enforcement procedure to be performed by the court or the public enforcement officer, bearing in mind that the failure to do so would result in termination of enforcement proceedings.

For any further queries or detailed explanation please contact us at: [rajko.krejovic@tsg.rs](mailto:rajko.krejovic@tsg.rs) or [office@tsg.rs](mailto:office@tsg.rs).

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