

LAW ON THE CESSATION OF APPLICATION OF THE LAW ON THE USE OF ABANDONED PROPERTY

- unofficial translation -

[Published in the Official Gazette of RS, no. 38/1998, dated 11 December 1998]

I. GENERAL PROVISIONS

Article 1

The Law on Use of Abandoned Property (Official Gazette of RS, Nos. 3/96 and 21/96) shall cease to be in force, as well as the regulations passed thereunder and other regulations regulating the issues of abandoned property and apartments passed between 30 April 1991 and the entry into force of this Law.

Article 2

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law.

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which new occupancy rights have been created shall be treated as acts granting rights of temporary occupancy until cancelled in accordance with this Law.

All administrative, judicial and any other acts and any other disposals of real estate and apartments, enacted on the basis of the regulations referred to in Article 1 of this Law shall cease to be effective after a claim has been filed by the authorised claimant.

II. RETURN OF PROPERTY TO PRIVATE OWNERS, POSSESSORS OR USERS

Article 3

The owner, possessor or user of the real property who abandoned the property shall have the right to repossess the real property with all the rights which s/he had before 30 April 1991 or before the real property became abandoned.

Article 4

For the purpose of this Law, the owner, possessor or user shall be understood to mean the person who was the owner, possessor or user of the real property under the applicable legislation at the time when the real property became abandoned.

Article 5

A user to whom the real property was allocated for temporary use pursuant to the Law on the Use of Abandoned Property (hereinafter referred as: the temporary user) may continue to use the real property under the conditions and in the manner as provided by the Law on the Use of Abandoned Property until a decision referred to in Article 11 of this Law has been issued.

Article 6

If the temporary user who is required to vacate the property pursuant to the provisions of this Law cannot or does not wish to return to the apartment in which s/he lived before 30 April 1991 and who has not been provided with another apartment meeting the conditions of appropriate accommodation, the responsible body of the Ministry of

Refugees and Displaced Persons on the territory of which s/he had his/her last domicile or residence shall provide him/her with appropriate accommodation within the deadline set in the decision ordering him/her to move out. If the temporary user referred to in Paragraph 1 of this Article presents evidence that s/he submitted a claim for repossession of his/her property, s/he may not be evicted by force until s/he is enabled to return or freely dispose of his/her property, in line with Annex 7 of the General Framework Peace Agreement for Bosnia and Herzegovina or until an alternative accommodation has been provided in another way within one year.

If the request of the temporary user and free disposal of his/her property has been resolved, in no event shall failure of the responsible body to meet its obligations under paragraph 1 of this Article operate to delay the ability of the owner, possessor or user to enter into possession of his/her property.

The body responsible for the provision of accommodation shall not be obliged to provide an accommodation to a person using the apartment without valid legal basis.

Article 7

The owner, possessor or user of abandoned real property, or his/her authorised representative, shall have the right to file a claim at any time for the repossession or disposal in another way of his/her abandoned property.

The right of the owner to file a claim shall not become obsolete.

Article 8

A claim under Article 7 of this Law may be filed by the owner, possessor or user of abandoned real property with the responsible body of the Minister of Refugees and Displaced Persons in the municipality on the territory of which the real property is located.

Claims may be made in writing signed by the claimant or an authorised representative, or orally by the claimant or an authorised representative. Claims made in writing may be submitted in person, by mail or by any other person.

No power of attorney is required for another person to submit a claim signed by the claimant.

A claim should include:

1. information on the owner, possessor or user;
2. all necessary information on the real property;
3. any evidence possessed by the claimant indicating that the claimant is the owner, possessor or user of the real property;
4. the date when the claimant intends to repossess the real property.

The responsible body shall accept claims regardless of whether or not supporting documentation is supplied by the claimant. In the event that the claimant cannot provide the necessary supporting documentation, the responsible body shall check the records of the relevant court or administrative body and any other available documentation to confirm the rights of the claimant.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any administrative body in either Entity, and any other document which shows the claimant's identity, and shall use any options provided in the Law on General Administrative Proceedings in the identification process.

The claimant shall be fully released from taxation, as well as from other expenses of the proceedings as provided in Articles 113 through 119 of the Law on General Administrative Proceedings ("The SFRY Official Gazette", No. 47/86, "The RS Official Gazette", No. 1/94, Special Issue 10/95).

Article 9

The responsible body of the Ministry of Refugees and Displaced Persons shall be obliged to issue a decision to the claimant within 30 days from the date of receipt of the claim for repossession of real property.

Article 10

The proceedings to return the real property to the owner, possessor or user shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise. The procedure until the issuance of the decision shall be carried out as an expedited procedure.

Article 11

The decision on return of the real property to the owner, possessor or user shall contain the following:

- information on the owner, possessor or user to whom the real property is returned,
- information on the real property subject to return,
- the time limit within which the real property will be returned or put at disposal of the owner, possessor or user,
- a decision whether the temporary user is entitled to appropriate accommodation,
- a decision terminating the right of the temporary user to use the real property as of the date of the intended return of the claimant,
- the time limit for the temporary user to vacate the property, or for handing over of the land.

The decision under Paragraph 1 of this Article may not set a time limit for the temporary user to vacate the property shorter than 90 days from the date of the issuance of the decision, nor longer than the date of the intended return of the owner, possessor or user, but the day of the intended return may not be earlier than 90 days from the date of submitting the claim.

The claimant may reoccupy property that is not in possession of a temporary user immediately on receipt of the decision.

In exceptional circumstances, the deadline referred to above may be extended by up to one year if the body responsible for providing another accommodation in accordance with Article 6 of this Law provides detailed documentation regarding the lack of available accommodation to the Ministry of Refugees and Displaced Persons. In case of the return of arable land into possession, the time limit for its handing over may be extended, as an exception, until the harvest is collected.

Article 12

The responsible body of the Ministry of Refugees and Displaced Persons shall submit its decision to the claimant requesting the repossession of the property

Article 13

The party to whom the decision under Article 11 of this Law is referred may at any time initiate proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement of Peace in Bosnia and Herzegovina, hereinafter referred to as the Commission).

In case that the proceedings under Paragraph 1 of this Article have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision referred to in Article 11 of this Law, shall be stayed pending the final decision of the Commission.

A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

A decision of the Commission shall be enforced by the competent bodies of the Republika Srpska.

III. RETURN OF APARTMENTS TO THE HOLDERS OF OCCUPANCY RIGHT

Article 14

The occupancy right holder of an abandoned apartment shall have the right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Persons who have left their apartments after 30 April 1991, are presumed to be refugees and displaced persons under Annex 7, unless it is established that they left their apartments for reasons wholly unrelated to the conflict.

Article 15

The occupancy right holder referred to in Article 14 of this Law shall be entitled to file a claim for repossession of the apartment.

A claim for repossession of the apartment shall be filed with the responsible body of the Ministry of Refugees and Displaced Persons in the municipality in which the apartment is located.

A claim for repossession of the apartment should include:

- information on the claimant;

- information on the apartment;
- evidence that the claimant is the occupancy right holder or a member of the latter's family household;
- the date when the claimant intends to reoccupy the apartment, but not later than one year from the date of submitting the claim;
- information on the residence of the occupancy right holder and members of his/her household at the time when the claim is submitted.

If the temporary user of the apartment presents evidence that s/he submitted a claim for return of his/her occupancy right, s/he shall not be evicted by force from the apartment allocated to him/her for temporary use until s/he is enabled to freely dispose of his/her apartment, or until an appropriate accommodation has been provided in another way within one year.

The responsible body shall accept all claims with or without the appropriate documents enclosed by the claimant. In cases when the claimant is not able to provide the necessary relevant documents, the responsible body shall verify the evidence, as well as other available documents, with the allocation right holder, the appropriate court or administrative body in order to have the rights of the claimant confirmed.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any legal body in either Entity, as well as any other document confirming the identity of the claimant.

The claimant shall be fully exempted from taxation as well as from other expenses of the proceedings, as provided in Articles 113 through 119 of the Law on General Administrative Proceedings.

Article 16

A claim for repossession of the apartment may be filed within 6 months from the date of entry into force of this Law.

If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, his/her occupancy right shall be cancelled.

Article 17

The responsible body of the Ministry of Refugees and Displaced Persons shall decide on the claim for the repossession of the apartment by the occupancy right holder within 30 days from the date of receipt of the claim. The allocation right holder shall refer the case to the responsible municipal or city administrative body within 30 days from the issuance of the decision referred to in the Article above which relates to the apartment occupied by the new occupancy right holder based on an act issued by the allocation right holder, i.e. contract (hereinafter: the current user). The responsible municipal or city administrative body shall then pass a decision on the allocation of another apartment to the current user or occupancy right holder within a deadline which cannot be longer than the deadlines referred to in Article 18 of this Law.

If the responsible municipal body has decided to allocate another apartment to the occupancy right holder, this Decision shall have to be passed in accordance with the criteria which must be harmonised with Article 1 Annex 7 of the General Framework Agreement in line with the European Convention on Human Rights and with other regulations of the Republika Srpska

Article 18

The decision on repossession of the apartment by the occupancy right holder shall contain:

- a decision confirming that the claimant is the occupancy right holder;
- a decision on repossession of the apartment by the occupancy right holder if there is a temporary user in the apartment, or if the apartment is vacant or occupied without legal basis;
- a decision on termination of the right of temporary use of the apartment if there is a temporary user of the apartment;
- a time limit for vacating the apartment by a temporary user or another person in possession of the apartment;
- a decision concerning whether the temporary user is entitled to accommodation in accordance with the ZOSO.

The time limit for vacating the apartment referred to in Paragraph 1(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of the intended return of the holder of the occupancy right, but the day of the intended return may not be earlier than 90 days from the date of submitting the claim.

The occupancy right holder may reoccupy an apartment that is vacant immediately on receipt of the decision, unless the apartment is in possession of a temporary user in accordance with this Law. In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended by up to one year if the body responsible for providing alternative accommodation on the territory of which the temporary user of the apartment had the last domicile or residence provides detailed documentation regarding the lack of available housing for provision of appropriate accommodation the Ministry for Refugees and Displaced Persons. In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the occupancy right holder shall be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

Article 19

The responsible body shall deliver the decision referred to in Article 18 of this Law within 8 days from the date of issuance of the decision to:

- the occupancy right holder;
- the user of the apartment;
- the allocation right holder.

Article 20

The proceedings to return the apartment to the occupancy right holder shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise.

Article 21

The occupancy right to the apartment shall cease in case the occupancy right holder fails to reoccupy the apartment without a justified cause, within one year from the day when the decision becomes final. The reason for which the occupancy right holder failed to commence to use the apartment shall be deemed justified:

- if the occupancy right holder has initiated an enforcement procedure, while the other party continues to occupy that apartment;
- if the occupancy right holder is unable to return to the municipality where the apartment is located for the reason of his/her justified fear of persecution;
- if the occupancy right holder has been drafted into the army;
- if the occupancy right holder is admitted to medical care;
- if the occupancy right holder is in the old peoples' home, disabled peoples' home, pensioners' home, etc.
- if the occupancy right holder is serving a prison sentence during the period of imprisonment sentence;
- if a certain security measure is being taken against the occupancy right holder;
- if the occupancy right holder and members of her/his family household temporarily reside in a different place within the country or abroad for the reasons mentioned in Paragraph 1 of Article 48 of the ZOSO; or
- if an apartment is the subject of the claim submitted to the Commission for the Real Property Claims of the Displaced Persons and Refugees.

The occupancy right holder's right to use the apartment shall not cease in the cases referred to in the previous paragraph.

Article 22

Upon the cancellation of the occupancy right under Articles 16 and 21 of this Law, the allocation right holder may allocate the apartment for use to the temporary user or another person in accordance with the provisions of the ZOSO.

If the temporary user has been issued a decision by the Ministry of Refugees and Displaced Persons, s/he shall stay in possession of such an apartment until he is provided with another appropriate accommodation.

Article 23

The party referred to in the decision under Article 18 of this Law may initiate at any time proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, hereafter: the Commission).

In case that such proceedings have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision, shall be stayed pending the final decision of the Commission. A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law. A decision of the Commission shall be enforced by the competent body of Republika Srpska.

IV - SPECIAL PROVISIONS

Article 24

The repossession of abandoned real property or the apartment by the owner, user or occupancy right holder shall be witnessed by an official and interested parties.

A report shall be made on the return of the real property or apartment and on the reinstatement of the owner or user into possession of the property or apartment. The report shall contain a detailed description of the real property under the process of return.

Article 25

The provisions of this Law shall also apply to the abandoned real property the ownership of which has been acquired after 30 April 1991 under any title on sale of real property (contracts on exchange, purchase, gift, etc.)

Article 26

The provisions of this Law regulating the manner of repossession of the real property or apartment by the owner, possessor or user shall also apply regarding repossession of the real property allocated to temporary users on the basis of rationalisation (excess housing space).

Article 27

A decision on repossession of real property may be appealed with the Ministry of Refugees and Displaced Persons within 15 days from the date of the receipt of the decision.

Article 28

The conditions for and the manner of the purchase of an apartment for the occupancy right holders to whom the apartments have been returned in accordance with this Law shall be regulated by a separate law.

Article 29

The Minister of Refugees and Displaced Persons shall pass an instruction on the application of Articles 8 through 11 and Articles 15 through 18 of this Law within 30 days from the date of the entry into force of this Law.

Article 30

This Law shall enter into force on the 8th day after its publication in the Official Gazette of the Republika Srpska

President of the National Assembly:
Petar Djokic
(signature)
(seal)

Number: 02-1481/98
Date: December 2, 1998

EXPLANATION OF THE PROPOSED LAW ON CESSATION OF APPLICATION OF THE LAW ON THE USE OF ABANDONED PROPERTY

I - CONSTITUTIONAL BASIS

Constitutional basis for passage of this Law is found in the provision of Article 101 (Item 4) of the Constitution of Republika Srpska, where it is regulated that the Republic shall ensure relations pertaining to property and obligations and protection of all forms of property. As the signatory of the Dayton Agreement, Republika Srpska shall regulate through its legislation the application of the right to return in accordance with Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, as well as the return of overall property for persons who abandoned such property since April 1991.

II - REASONS FOR PASSAGE OF THE LAW

In the aim of a "faster" return of refugees and displaced persons the international community raised the issue of constitutionality of the Law on Abandoned Property (Official Gazette of Republika Srpska, Nos. 3/96 and 21/96), as well as of certain laws of the Federation of Bosnia and Herzegovina.

To that aim a number of meetings were held with the representatives of the Federation of Bosnia and Herzegovina and the international community at the OHR in Sarajevo. On several occasions the OHR for BiH insisted with the responsible bodies of Republika Srpska to start amending the Law on Use of Abandoned Property, claiming that this Law is in contradiction with the Dayton Peace Agreement and that it represents a serious obstacle to a speedier return of refugees and displaced persons to their pre-war homes. Due to the fact that the responsible bodies of Republika Srpska did not respond in a timely fashion, in March 1998 the representatives of the international community from the OHR submitted to the Government of Republika Srpska the Draft Law on Cessation of Validity of the Law on the Use of Abandoned Property, with the request that the Law enters the procedure for the purpose of its urgent adoption.

Considering that the text of the OHR Draft Law regulates only the legal status of abandoned property and apartments in the light of the Dayton Peace Agreement position on the right of refugees and displaced persons to return to their homes and ensure the return of such rights that arose along with the application of the Law on Use of Abandoned Property, it is therefore necessary to accept this suggestion and regulate this matter by a law of Republika Srpska.

The Federation of BiH passed the laws regulating the issue of return of apartments to occupancy right holders and the issue of return of property to private owners (these laws entered into force on 4 April 1998), therefore it is necessary to pass such a law in Republika Srpska too.

At the session in June 1998 the Peoples Assembly of Republika Srpska presented a certain number of remarks, and the Draft Law on Cessation of Application of the Law on the Use of Abandoned Property was returned to the proposer for additional changes.

Republika Srpska Government incorporated all justified and legally based remarks which were not contrary to Annex 7 of the Dayton Agreement in the provisions of the Proposed Law.

III - EXPLANATION OF THE PROPOSED LEGAL ARRANGEMENTS

This Law regulates that the Ministry of Refugees and Displaced Persons, as the responsible body of Republika Srpska (which was also the responsible body so far), shall manage the abandoned property until such property is returned to the owners, and until apartments are returned to the previous occupancy right holders. Transfer of management of abandoned property and apartments to municipal administrative bodies responsible for housing and utility, and geodetic and property issues would have a negative effect and would mean waste of precious time, which would lead to slow pace of, and inefficiency in, deciding on claims for return of abandoned property.

Articles 1 and 2 (general provisions)

These provisions regulate that in Republika Srpska the application of the Law on the Use of Abandoned Property and the regulations passed thereunder shall cease. All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law.

Articles 3 through 13 (return of property to owners, possessors, or users)

These provisions regulate the manner and procedure by which the temporarily abandoned real property shall be returned to owners, possessors, or users.

For the purpose of clarification, Article 4 defines the terms of owner, possessor, and user. These are the persons who abandoned real property after 30 April 1991 and had such property at their disposal under the applicable legislation at the time. Person to whom real property was allocated in accordance with the Law on the Use of Abandoned Property is called "the temporary user".

In the provisions of Article 6, to which the largest number of remarks were been presented at the Assembly, the proposer amended Paragraphs 2 and 3 in order to ensure that refugees and displaced persons exercise all rights defined by Annex 7 to the Dayton Peace Agreement; in that regard, the proposer believes that the mentioned legal basis in this Article will not be an obstacle to the implementation of the Dayton Peace Agreement.

The Law regulates that abandoned property shall be returned to the owner at his/her request submitted at any time, without time limitations for submitting the request, and it is also listed what such a request should contain. A deadline is also set within which the responsible body is obliged to decide on returning the real property to the owner, possessor, or user.

Deciding on return of real property and free use and disposal of such real property is an important condition for a speedy return of displaced persons and refugees to their pre-war homes.

Also regulated were the procedure for deciding in the first instance, and the right of the parties to whom the decision under Article 11 of this Law is referred to appeal with the Commission for Real Property Claims of Displaced Persons and Refugees pursuant to Annex 7 of the Dayton Peace Agreement. Pursuant to the Law the decisions of the Commission are final and binding.

Articles 14 through 24 (return of apartments to occupancy right holders)

These provisions regulate the manner and the procedure by which the right to repossession of the apartment proclaimed as abandoned is exercised by the occupancy right holder.

Claim for return of apartment shall be submitted within six months from the date of entry into force of this Law. If the claim is not filed within this time period, the occupancy right of the occupancy right holder shall be cancelled by the force of the Law.

It is regulated that once the decision on repossession of apartment by the occupancy right holder is made, he/she is obliged to immediately move in such an apartment, but no later than one year from the date of receiving the final decision. If this deadline expires without justified cause (exceptions are listed in Article 21), the occupancy right holder shall lose the right to the apartment by the force of the Law.

After cancellation of the occupancy right pursuant to Article 16 (failure to duly file a claim) or Article 12 (failure to duly move into the returned apartment), the allocation right holder may allocate another apartment to the temporary user or any other person pursuant to applicable housing regulations.

Interested party may also appeal with the Commission for Real Property Claims of Displaced Persons and Refugees, whose decision shall be final and binding.

Articles 24 through 28 (special provisions)

Provisions of Articles of this Chapter regulate who shall witness the return of real property to previous owners, possessors, users, or occupancy right holders, as well as that the provisions of this Law apply to abandoned real property the ownership of which has been acquired under any title on sale of real property. Article 26 also regulates that the provisions of this Law also apply to return of real property allocated to temporary users on the basis of rationalisation (excess housing space).

Article 27 regulates to which body, and within which time period, an appeal against the decision of the first instance body on return of real property must be filed.