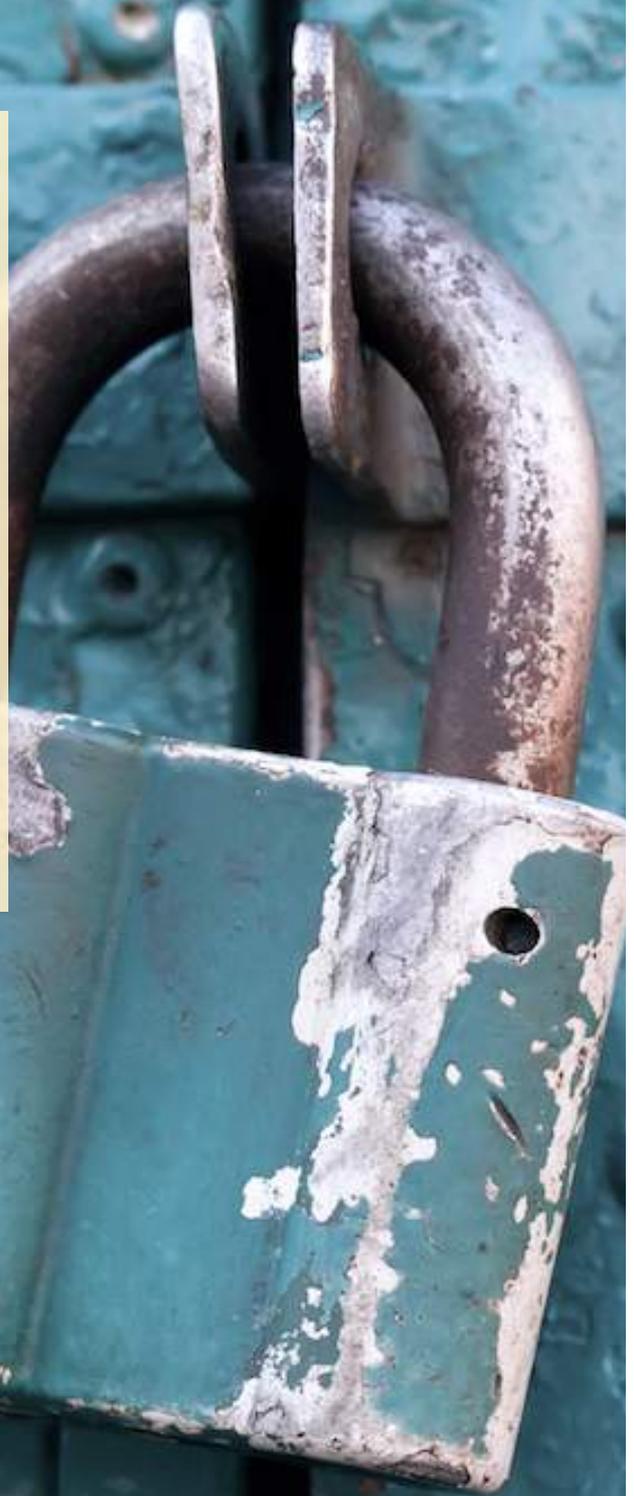


**review\_ LIMITATION OF THE  
BASIS OF DISPUTE  
RECORDING IN REAL ESTATE  
CADASTER**



On the 3rd regular session of the National Assembly of the Republic of Serbia in 2017, held on 15 May 2017, the authentic interpretation of the Article 82 paragraph 1 point 2 of the Law on State Diameter and Cadaster (Official Gazette of the Republic of Serbia no. 72/2009, 18/2010, 65/2013, 15/2015 – decision of the Constitutional Court, 96/2015 and 47/2017 – authentic interpretation). The bylaw in subject defies, among others, the cadaster *“recording of dispute, as another proceeding conducted before the court or the public authority, that can result in change of real estate recording rights”*.

The authentic interpretation of the National Assembly elaborates that previously quoted regulation should be understood in such manner that the dispute recording in real estate cadaster refers only to litigation conducted by the claim of previously recorded rightsholder against currently recorded rightsholder, as to remove recorded rights and establish previous state of record. Moreover, litigations conducted by the claims of the third party (persons that are not previously recorded rightsholders on real estate), can be recorded only in following cases:

- (i) Litigations for determination of property rights due to maintenance,
- (ii) Litigations by claims of creditors for annulment of legal actions of debtors in line with the Articles 280-285 of the Law on Obligations (Official Gazette of SFRY no. 29/78, 39/85, 45/89 - decision CCY and 57/89, Official Journal of FRY no. 31/93 and "Official Journal of Montenegro no. 1/2003 – Constitutional charter),
- (iii) Litigations initiated by the prosecutor as directed by an extra-judicial court or other relevant authority.

From our point of view, the major reason for the adoption of this interpretation is uncoherent and inconsistent courts' practice as well as the practice of the Real Estate Cadaster. On the other hand, it is not rare that requests of dispute annotations are filed by third parties in order to prevent the registered owner of the immovable property to freely dispose with it. In order to prevent the registration of various dispute annotations (which in practice may sometimes lead to the registration of such of disputes which do not cause the change of the registration of real estate rights, and which is at the same time contrary to the sense of Article 82, paragraph 1, point 2 of the aforementioned Law on State Diameter and Cadaster), and to prevent the abuse on behalf of third parties, it was necessary to specify the sense and meaning of the aforementioned provision, which was performed using the subject authentic interpretation.

We would like to draw your attention to the fact that this interpretation is not a novelty in Serbian legislation, considering that current Land Registry Act ("Off. Novelties of Kingdom of Yugoslavia", no. 146/30, 281/31), which had been in force until the establishment of the Real Estate Cadastral system, foresaw the possibility of annotation registration in certain cases, especially in cases of filling the lawsuit for the establishment of the previous state on the immovable property, respectively in case of filing the mortgage lawsuit. However, such limitations for registration of dispute annotation were not effective in practice, therefore third parties continued with the abuse of the effects of annotation registration in the Real Estate Cadaster.



## Conclusion

According to the aforementioned, we are of the opinion that the purpose of subject authentic interpretation is the reduction of the possibilities for the abuse of the institute which regulates the registration of dispute annotation on the immovable property of legal owners as well as specifying the types of disputes which cannot be annotated in the Real Estate Cadaster.



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