

Mr Slobodan N. Ilijić¹

NEKA PITANJA OBAVEZNOG OSIGURANJA POSREDNIKA U PROMETU I ZAKUPU NEPOKRETNOSTI

STRUČNI RAD

Apstrakt

Autor razmatra delatnost posredovanja u prometu i zakupu nepokretnosti i obavezno osiguranje posrednika. Ta delatnost je prvi put uvedena u pravni sistem Republike Srbije putem Zakona o posredovanju u prometu i zakupu nepokretnosti (ZOP). Nova delatnost usavršavana je u pravnom sistemu kroz promene u uslovima za upis u Registar posrednika. Usavršavanje delatnosti trajalo je od novembra 2013. godine, kada je donet ZOP, do januara 2020 godine, kada je počela da se primenjuje poslednja Novela ZOP-a. Jedan od propisanih uslova za upis u Registar posrednika predviđao je podnošenje važećeg ugovora o osiguranju zaključenog u skladu sa čl. 13 ZOP-a. Povezujući odredbe ZOP-a o obaveznom osiguranju i Službeno obrazloženje Predloga zakona o posredovanju u prometu i zakupu nepokretnosti, autor je ustanovio da odredbe ZOP-a ne daju jasan odgovor posredniku da li posle registracije mora obnavljati važeći ugovor o osiguranju. Autor nastoji da prevaziđe iznetu nejasnoću u odredbama ZOP-a predlažući u zaključcima formulaciju koja odgovara uporednim zakonskim rešenjima o obaveznom osiguranju posrednika u prometu i zakupu nepokretnosti.

***Ključne reči:** zakon, posrednik, promet i zakup nepokretnosti, Registar posrednika, obavezno osiguranje*

¹ Član Predsedništva Udruženja pravnika Srbije
Rad je primljen: 1. septembra 2022.
Rad je prihvaćen: 2. februara 2023.

Uvod

Zakon o posredovanju u prometu i zakupu nepokretnosti donet je 2013. godine.² U vremenskom rasponu od novembra 2013. do januara 2020. godine ZOP je usavršavao novu delatnost posredovanja u prometu i zakupu nepokretnosti putem pooštavanja uslova za upis u Registar posrednika. Uprkos promenama u ZOP-u u pogledu uslova za upis u Registar posrednika, drugi uslov za taj upis u vidu važećeg ugovora o osiguranju nije se menjao od 2013. do danas. Službeno obrazloženje Predloga zakona o posredovanju u prometu i zakupu nepokretnosti najavilo je da će biti uvedeno obavezno osiguranje u svakom trenutku poslovanja posrednika. U odredbama ZOP-a jasno je da podnosilac zahteva prilikom registracije mora da se legitimise važećim ugovorom o osiguranju kako bi stekao status posrednika, ali nije jasno da li posle sticanja statusa posrednik mora obnavljati ugovor o osiguranju.

I. Pojava pružalaca usluga posredovanja u prometu nepokretnosti u SFRJ

Pojava pružalaca usluga posredovanja u prometu nepokretnosti zapažena je u SFRJ krajem XX veka. Ima mišljenja da su se u Sloveniji, Hrvatskoj i BiH spontano pojavili 90-ih godina XX veka.³ U isto vreme pojavili su se i u Srbiji, gde su pominjani pod nazivima agencija za promet nekretnina, privatni posrednik registrovan kao radnja za nekretnine, preduzeće za promet nepokretnosti i sl.⁴ Ključni događaj za nastanak pružalaca posredničkih usluga u prometu nekretnina nastupio je s prelaaskom pretežnog dela stanova iz društvene svojine u privatnu svojinu, kao i sa samo delimičnim povraćajem zemljišta, čime je pojačan intenzitet raspolaganja nepokretnostima.⁵ Posle tih pojava u bivšim republikama SFRJ postepeno je sazrevala svest i politička volja, sada već u samostalnim državama, da se posebnim zakonom regulise promet nepokretnosti i uvede obavezno osiguranje posrednika po uzoru na razvijene privrede. Neposredno pre donošenja ZOP-a u Republici Srbiji procenjeno je da se ostvareni godišnji promet nepokretnosti kreće u vrednosti od tri milijarde evra, a

² Zakon o posredovanju u prometu i zakupu nepokretnosti – ZOP, *Službeni glasnik RS*, br. 95/2013, 41/2018 i 91/2019.

³ Prof. dr Šime Ivanjko: „Posrednici u osiguranju u pravu Republike Slovenije, Hrvatske i Federacije BiH“, *Osiguranje* br. 5/2005, 84; Prof. dr Marijan Ćurković: *Osiguranje od izvanugovorne i ugovorne (profesionalne) odgovornosti*, Zagreb, 2015, 249.

⁴ Slavica Jerković, direktor „Stankom“ biroa: „Zaključivanje ugovora o prometu nepokretnosti preko agencije“, *Pravni život* br. 9-10/1993, 935; Đorđe Vukotić, advokat: „Pružanje pravnih usluga na tržištu nekretnina“, *Pravni život* br. 9-10/1993, 926 i dr.

⁵ Ibidem.

da je vrednost nenaplaćenog poreza između 600 miliona i dve milijarde dinara.⁶ Ti podaci su inicirali donošenje ZOP-a. Za republike bivše SFRJ zajedničko je to da su u prvoj deceniji XXI veka putem zakona uvele delatnost posredovanja u prometu nepokretnosti i obavezno osiguranje posrednika.

II. Uvođenje delatnosti posredovanja u prometu i zakupu nepokretnosti u pravni sistem Republike Srbije

1. Osnovne uslove za uvođenje te delatnosti u pravni sistem Republike Srbije predvideo je ZOP iz 2013. godine. Međutim, 2017. godine ti osnovni uslovi postali su neadekvatni. To stoga što je donet novi Zakon o sprečavanju pranja novca i finansiranja terorizma.⁷ Zakon o SPN/FT izričito je predvideo posrednika u prometu i zakupu nepokretnosti kao jednog od neposrednih obveznika tog zakona. Radi zakonodavno-pravnog usaglašavanja ZOP-a sa Zakonom o SPN/FT, doneta je Novela ZOP-a iz 2018 godine.⁸ Naredne, 2019. godine usledilo je donošenje Novele Zakona o SPN/FT.⁹ Radi zakonodavno-pravnog usaglašavanja ZOP-a sa Novelom SPN/FT iz 2019. doneta je Novela ZOP-a iz 2019. godine.¹⁰ Za Novelu ZOP-a iz 2018. i Novelu ZOP-a iz 2019. godine zajedničko je to da su se obe odnosile samo na pitanja registracije posrednika u prometu i zakupu nepokretnosti.

2. Postepenost uvođenja delatnosti posredovanja u pravni sistem Republike Srbije omogućila je zakonodavno-pravna tehnika, koja je u zakonodavstvu korišćena u drugoj deceniji XXI veka. Naime, ZOP iz 2013. godine stupio je na pravnu snagu 8. novembra 2013. godine, ali je u prelaznim i završnim odredbama propisao dva roka za odlaganje primene pojedinih članova.¹¹ Prvi rok se odnosio na čl. 11 ZOP-a, a predviđao je da se taj član primenjuje počev od dvanaestog meseca od dana stupanja na snagu tog zakona. To je značilo da je primena čl. 11 ZOP-a odložena za period posle 9. novembra 2014. godine. Čl. 11 ZOP-a imao je za predmet organizaciju i polaganje stručnog ispita fizičkog lica koje je bilo zainteresovano za rad u subjektu za posredovanje u prometu i zakupu nepokretnosti. Drugi rok se odnosio na čl. 4-10 i čl. 13 ZOP-a, a predviđao je da se ta grupa članova primenjuje počev od osamnaestog meseca od dana stupanja na snagu tog zakona. To je značilo da je primena čl. 4-10

⁶ Podaci navedeni u Službenom obrazloženju Predloga zakona o prometu i zakupu nepokretnosti, *otvorenavlada.RS/PZ-nepokretnosti084-lat-doc-2*, pristup od 28. 7. 2022.

⁷ Zakon o sprečavanju pranja novca i finansiranja terorizma – Zakon o SPN/FT, *Službeni glasnik RS*, br. 113/2017.

⁸ Zakon o izmenama i dopunama Zakona o posredovanju u prometu i zakupu nepokretnosti – Novela ZOP-a iz 2018, *Službeni glasnik RS*, br. 41/2018.

⁹ Zakon o izmenama i dopunama Zakona o sprečavanju pranja novca i finansiranja terorizma – Novela Zakona SPN/FT iz 2019, *Službeni glasnik RS*, br. 91/2019.

¹⁰ Zakon o izmenama i dopuni Zakona o posredovanju u prometu i zakupu nepokretnosti – Novela ZOP-a iz 2019, *Službeni glasnik RS*, br. 91/2019.

¹¹ ZOP, čl. 36.

i čl. 13 ZOP-a odložena za period posle 9. maja 2015. godine. Grupa čl. 4-10 ZOP-a regulisala je četiri uslova za upis u Registar posrednika, a čl. 13 ZOP-a regulisao je samo jedan uslov za upis u Registar posrednika. Drukčije rečeno, ako se navedenim rokovima odložene primene iz osnovnog teksta ZOP-a dodaju rokovi primene odredaba iz Novele ZOP-a od 2018. i iz Novele ZOP-a od 2019. godine, proizlazi da je važeći tekst odredaba ZOP-a počeo da se primenjuje od 1. januara 2020. godine. Dakle, uvođenje nove delatnosti posredovanja u prometu i zakupu nepokretnosti u pravni sistem Republike Srbije realizovano je postepeno noveliranjem ZOP-a u vremenskom intervalu 2013–2020. godine.¹²

3. Postepeno uvođenje delatnosti posredovanja bilo je usmereno ka uslovima za upis u Registar posrednika (Registar). Upisom u Registar podnosilac zahteva sticao je status posrednika.¹³ ZOP je propisao da Registar u pisanoj i elektronskoj formi vodi ministarstvo za trgovinu.¹⁴ U uvodnim članovima ZOP-a rešeno je prethodno pravno pitanje registracije posrednika – ko može da stekne status posrednika upisom u Registar. Iz kruga privrednih subjekata redaktor ZOP-a je izdvojio privredno društvo i preduzetnika kao podnosioc zahteva koji mogu da steknu status posrednika. Tim putem se u ZOP-u došlo do uspostavljanja glavnog pravnog pravila u pogledu registracije posrednika. To pravno pravilo je glasilo: posrednik je privredno društvo, odnosno preduzetnik koji ima sedište u Republici Srbiji i koji je upisan u Registar.¹⁵

4. Iz glavnog pravnog pravila u ZOP-u je izvedeno nekoliko zabrana, koje su se odnosile na neovlašćeno obavljanje posredovanja u prometu i zakupu nepokretnosti. Najpre, ZOP je zabranio da pravno ili fizičko lice, koje nije upisano u Registar, obavlja posredovanje.¹⁶ Zatim, ZOP je zabranio da poslove posredovanja kod posrednika obavlja fizičko lice koje nema položen stručni ispit.¹⁷ Najzad, ZOP je zabranio da fizičko lice koje ima položen stručni ispit istovremeno obavlja poslove posredovanja za dva ili više posrednika, odnosno usluge u vezi s poslom koji je predmet posredovanja, kao i da obavlja druge radnje koje za cilj imaju dovođenje u vezu lica radi prometa ili zakupa nepokretnosti, osim uz pisanu saglasnost svih posrednika koji učestvuju u tom poslu i ako su nalogodavci i lica koja će eventualno zaključiti posredovani posao s nalogodavcima obavешteni o tome.¹⁸ Na kraju odeljka o uvođenju delatnosti posredovanja u pravni sistem Republike Srbije treba istaći da je tim putem rešeno prethodno pravno pitanje, to jest ko može da se bavi posredovanjem,

¹² Detaljnije o pravnom institutu zakupa videti kod doc. dr Miodraga Orlića: „Zakup“, u *Komentarima Zakona o obligacionim odnosima* (gl.urednik prof. dr S. Perović), 1995, 1034.

¹³ ZOP, čl. 4 u vezi sa čl. 5.

¹⁴ ZOP, čl. 3 tač. 3.

¹⁵ Zop, čl. 3 tač. 2.

¹⁶ ZOP, čl. 12 st. 1.

¹⁷ ZOP, čl. 12 st. 2.

¹⁸ ZOP, čl. 12 st. 3.

a ustanovljeno je i glavno pravno pravilo ZOP-a – da je posrednik privredno društvo ili preduzetnik sa sedištem u Republici Srbiji i da mora biti upisan u Registar.

5. Glavno pravno pravilo iz ZOP-a prihvaćeno je i u sudskoj praksi. Tako je Vrhovni kasacioni sud u jednoj svojoj sentenci usvojenoj po stupanju na snagu ZOP-a izneo stav da je za zakonito obavljanje poslova posredovanja u prometu i zakupu nepokretnosti i sticanje prava na posredničku naknadu neophodan uslov da pravno ili fizičko lice koje se bavi tom delatnošću bude upisano u Registar.¹⁹

III. Objašnjenje zakonskih termina

1. ZOP je kratak zakon sa svega 37 članova, tako da nisu definisani termini upotrebljavani u tom zakonu. Među upotrebljivanim terminima u ZOP-u nalazi se i termin nepokretnost. Matični zakon za definisanje pojma nepokretnosti je Zakon o prometu nepokretnosti.²⁰ ZPN je predvideo da nepokretnosti obuhvataju zemljište (poljoprivredno, građevinsko, šume i šumsko zemljište), zgrade (poslovne, stambene, stambeno-poslovne, ekonomske i dr.) i druge građevinske objekte, kao i posebne delove zgrada (stanove, poslovne prostorije, garaže i garažna mesta) na kojima može postojati zasebno pravo svojine.²¹ S navedenim pojmom u saglasnosti je i pojam nepokretnosti iz Zakona o proceniteljima vrednosti nepokretnosti.²² Dakle, sa stanovišta ZOP-a, ne bi trebalo da bude sporno šta se podrazumeva pod pojmom nepokretnost.

2. S pojmom nepokretnosti stoji u vezi i zakonska sintagma – promet nepokretnosti – pominjana na više mesta u ZOP-u. Po jednom mišljenju, promet nepokretnosti se smatra izrazom da označi prenos (prelazak) subjektivnih građanskih prava ili ovlašćenja sa jednog subjekta na druge.²³ Potpisnik ovog rada saglasan je s navedenim mišljenjem, koje je izloženo sasvim drugim povodom. Dakle, rešenja ZOP-a se mogu razumeti ako se sintagma *promet nepokretnosti* prihvati u navedenom značenju.

IV. Registracija posrednika u prometu i zakupu nepokretnosti

1. U periodu 2013–2020. godine menjani su uslovi za upis u Registar. Značaj ispunjenja uslova za upis u Registar sastojao se u tome što je ministarstvo za trgovinu registrovalo posrednika za neograničeno vreme trajanja ili dok god je obavljao poslove posredovanja, ili sve dotle dok ne bude brisan iz Registra. Danom donošenja

¹⁹ Sentenca iz presude Vrhovnog kasacionog suda Rev. 1137/2020 od 22. 10. 2020, utvrđena na sednici Građanskog odeljenja Vrhovnog kasacionog suda od 7. 4. 2021.

²⁰ Zakon o prometu nepokretnosti – ZPN, *Službeni glasnik RS* br. 93/2014, 121/2014 i 6/2015.

²¹ ZPN, čl. 1 st. 2.

²² Zakon o proceniteljima vrednosti nepokretnosti, *Službeni glasnik RS*, br. 108/2016 113/2017-dr. zakon, čl. 2 tač. 1.

²³ Prof. dr Dragor Hiber, „Predugovor obezbeđen kaparom kod ugovora o prometu nepokretnosti u pravu Srbije“, *Anali Pravnog fakulteta u Beogradu*, br. 3/2018 58, fusnota 1.

rešenja o upisu u Registar, a dan donošenja rešenja smatra se danom upisa u Registar, posrednik je mogao da započne posredovanje u prometu i zakupu nepokretnosti.²⁴

2. Za registraciju je predviđeno pet uslova u pet tačaka.²⁵ ZOP je kao **prvi uslov** predvideo da podnosilac zahteva imenuje najmanje jedno fizičko lice, koje je prethodno položilo stručni ispit, a zaposleno je kod podnosioca zahteva sa punim radnim vremenom. Ministar za trgovinu propisao je u podzakonskom opštem aktu program polaganja stručnog ispita, a kao sastavni deo tog programa predviđena je organizacija stručnog ispita.²⁶ Program polaganja stručnog ispita je respektivan program. **Drugi uslov** za upis u Registar podrazumevao je da podnosilac uz zahtev priloži važeći ugovor o osiguranju zaključen u skladu sa čl. 13 ZOP-a.²⁷ Prema ZOP-u, **treći uslov** za upis u Registar odnosio se na dokaze da podnosilac zahteva raspolaže odgovarajućim poslovnim prostorom u skladu sa čl. 14 ZOP-a. Kod četvrtog **uslova** za upis u Registar ZOP je predvideo da podnosilac u zahtevu odgovori na upite da li je podnosilac zahteva prekršajno kažnjavan po osnovu ZOP-a i da li mu je po istom osnovu izrečena zaštitna mera.

3. Peti uslov se sastojao iz više posebnih uslova, specifičnih obaveza i sa jasno traženim odgovorima na upite, koje je ministarstvo za trgovinu sabiralo za Registar u pisanom obliku. Peti uslov je od podnosioca zahteva tražio da označi pozicije onog lica koje vodi to privredno društvo i koje vodi posao posredovanja, s tim što je to lice moglo da bude osnivač, odnosno vlasnik, stvarni vlasnik, saradnik, član organa upravljanja privrednog društva i zastupnik društva. Od podnosioca zahteva traženo je da među zaposlenima imenuje fizičko lice ili lica koja su položila stručni ispit. U odnosu na podnosioca zahteva – preduzetnika – peti uslov je tražio da se u zahtevu imenuje fizičko lice kome je kao poslovno sposobnom poverio vođenje posla. Poseban peti uslov obuhvatio je to da se za lica koja su imenovana u zahtevu odgovori na pitanje da li je neko od njih osuđivan za krivično delo u Republici Srbiji ili stranoj državi. Takođe, peti uslov je tražio od podnosioca zahteva da odgovori na pitanja da li je neko od imenovanih teže povredio propise ili pak ponovio povredu propisa o sprečavanju pranja novca i finansiranja terorizma. Najzad, u okviru petog uslova ZOP je predviđao da se odgovori na pitanje da li je nekom od imenovanih izrečena mera zabrane vršenja pretežne delatnosti, kao i da li je izrečena mera zabrane vršenja pretežne delatnosti za odgovorno lice u pravnom licu. Dakle, ZOP je predvideo opravdano stroge uslove za registraciju posrednika.

4. Registracija posrednika obuhvatila je primenu ovlašćenja iz ZOP-a u vezi sa Zakonom o opštem upravnom postupku.²⁸ Sprovodeći postupak registracije, ministarstvo za trgovinu je ovlašćeno da ceni pravilnost i zakonitost zahteva podnetog

²⁴ ZOP, čl. 4 st. 2.

²⁵ ZOP, čl. 5.

²⁶ Pravilnik o stručnom ispitu za posrednika u prometu i zakupu nepokretnosti, sa Programom polaganja stručnog ispita za obavljanje poslova posredovanja u prometu i zakupu nepokretnosti, *Službeni glasnik RS*, br. 75/2014, 39/2017, 70/2018 i 98/2020.

²⁷ ZOP, čl. 5 st. 1 tač. 3.

²⁸ Zakon o opštem upravnom postupku – ZUP, *Službeni glasnik RS*, br. 16/2016 i 95/2018 – autentično tumačenje.

od lica koje bi prema ZOP-u moglo da stekne status posrednika. Ceneći podneti zahtev, ministarstvo je dolazilo u situaciju da zahtev oceni kao nekompletan, na primer zato što podnosilac zahteva nije mogao da pribavi dokaz o neosuđivanosti preduzetnika ili odgovornog lica u pravnom licu ili stvarnog vlasnika u privrednom društvu u Republici Srbiji ili inostranstvu. U tom slučaju, ZOP je predvideo obavezu za tog podnosioca zahteva da naknadno podnese izjavu pod krivičnom i materijalnom odgovornošću, kojom izjavom treba da odgovori na pitanje da li je osuđivan i da li je član neke organizovane kriminalne grupe?²⁹ Dakle, ZOP je propisao da je postupak registracije posrednika okončan pred ministrom za trgovinu ili odbijanjem zahteva za upis u Registar ili usvajanjem zahteva i donošenjem rešenja o upisu u Registar.³⁰ Ako je postupak po zahtevu podnosioca okončan negativnim, odbijajućim rešenjem, onda nezadovoljni podnosilac zahteva može da pokrene upravni spor.³¹

5. Registracija posrednika zasnovana je na jednom od ključnih ovlašćenja ministarstva za trgovinu da objavljuje Registar na internet stranici tog ministarstva. Tim povodom valja se podsetiti da je ZOP izričito propisao da je Registar javan i besplatno dostupan svim licima, bez ograničenja.³² To pravo i obaveza organa državne uprave iz ZOP-a proizašlo je iz ustavnog prava građana na obaveštenost.³³ Potpisnik ovog rada izvršio je uvid u objavljeni Registar u elektronskom obliku.³⁴ Prema registarskim brojevima, Registar obuhvata više od 1.000 posrednika, ali je očigledno da je jedan broj posrednika prethodno brisan. Registar u elektronskom obliku imao je sledeće rubrike: redni broj, tip posrednika, naziv i adresu, adresu ogranka, ime i prezime preduzetnika ili naziv privrednog društva, telefon i elektronsku adresu, adresu internet stranice, PIB i matični broj. Po mišljenju potpisnika ovog rada, u Registru u elektronskom obliku nedostaje za svakog posrednika rubrika o postojanju ili nepostojanju drugog uslova za upis u Registar, odnosno o postojanju ili nepostojanju važećeg ugovora o osiguranju u skladu sa čl. 13 ZOP-a. Za taj besplatni podatak zainteresovan je svaki klijent, nalogodavac, pre nego što sa posrednikom zaključi ugovor o posredovanju i tokom tog ugovornog odnosa.³⁵

6. Registracija posrednika obuhvatila je dva važna pravna instituta. **Prvo**, ZOP je regulisao institut brisanja posrednika iz Registra.³⁶ Sa pet tačaka ZOP je propisao razloge za brisanje posrednika iz Registra. Rešenje o brisanju iz Registra donosi

²⁹ ZOP, čl. 5 st. 3.

³⁰ ZOP, čl. 4.

³¹ ZOP, čl. 10 st. 3.

³² ZOP, čl. 7.

³³ Ustav Republike Srbije, *Službeni glasnik RS*, 98/2006, 115/2021 i 16/2006, čl. 51.

³⁴ Internet stranica Ministarstva za trgovinu, turizam i telekomunikacije sa Registrom posrednika, www.mtt.gov.rs, pristup 31. 7. 2022.

³⁵ Detaljnije prof. dr Mihailo Velimirović: „Ugovor o posredovanju“, *Enciklopedija imovinskog prava i prava udruženog rada*, 1978, 560.

³⁶ ZOP, čl. 10 st. 1, 2 i 3.

ministar za trgovinu na osnovu podataka iz javne evidencije i podataka utvrđenih u postupku nadzora (upravnog i inspeksijskog).³⁷ Rešenje ministra za trgovinu konačno je i protiv tog rešenja posrednik može pokrenuti upravni spor.³⁸ Prvi razlog za brisanje posrednika iz Registra predvideo je situaciju u kojoj je posrednik prestao da ispunjava neki od pet uslova propisanih za upis u Registar.³⁹ Pošto je važeći ugovor o osiguranju zaključen u skladu sa čl. 13 ZOP-a bio jedan od uslova za upis u Registar, samo nepostojanje tog uslova posle registracije osnovan je razlog za brisanje posrednika iz Registra. Ministarstvo za trgovinu kroz upravni nadzor nad konkretnim posrednikom i tržišni inspektor prilikom inspeksijskog nadzora u poslovnim prostorijama posrednika imaju pravo da u svako doba od posrednika zatraže na uvid važeći ugovor o osiguranju zaključen u skladu sa čl. 13 ZOP-a. Ako se prilikom nadzora utvrdi da je, primera radi, istekao rok na koji je konkretni ugovor o osiguranju bio zaključen, ili ako je ugovoreno osiguranje nesaglasno sa čl. 13 ZOP-a, u tom slučaju tržišni inspektor konstatuje zapisnički da posrednik nema važeći ugovor o osiguranju zaključen u skladu sa čl. 13 ZOP-a, tako da je poznat kraj ovog upravnog postupka. Samim tim ispunjen je uslov za brisanje iz Registra, bez obzira na to što je u momentu sticanja statusa posrednik imao zaključen ugovor o osiguranju u skladu sa čl. 13 ZOP-a. Tada je ministar za trgovinu ovlašćen da donese rešenje o brisanju posrednika iz Registra. Klijent, nalogodavac, ne vidi iz Registra u elektronskom obliku da je vršen upravni ili inspeksijski nadzor nad upravo tim posrednikom, jer u Registru u elektronskom obliku nema rubrike o postojanju ili nepostojanju obaveznog osiguranja posrednika. Otuda, ZOP treba izričito i jasno da propiše obavezu posrednika da obnavlja ugovor o osiguranju, s obzirom na to da jasna i izričita obaveza posrednika nije predviđena u ZOP-u. **Drugo**, ZOP je predvideo obavezu posrednika da vodi evidenciju o posredovanju.⁴⁰ Prema imperativnim normama ZOP-a, ta evidencija je obuhvatila podatke o ugovorima o posredovanju iz čl. 15 ZOP-a, podatke o ugovorima o potposredovanju iz čl. 29 ZOP-a, a naročito podatke o nalogodavcu, nepokretnosti čiji je promet odnosno zakup predmet posredovanja, te o ishodu posredovanja i posredničkoj naknadi.⁴¹ U podzakonskom opštem aktu preuzeta je iz ZOP-a evidencija koju posrednik mora trajno da vodi.⁴² Međutim, u obaveznoj evidenciji posrednika ne pominje se važeći ugovor o osiguranju pozivom na čl. 5 st. 1 tač. 2 ZOP-a, ni važeći ugovor o osiguranju pozivom na čl. 13 ZOP-a. To praktično znači da zakonom propisana evidencija ne omogućava tržišnom inspektorima da izvrši uvid u poslovnim prostorijama posrednika

³⁷ ZOP, čl. 10 st. 2.

³⁸ ZOP, čl. 10 st. 3.

³⁹ ZOP, čl. 10, st. 1 tač. 1.

⁴⁰ ZOP, čl. 17 st. 1.

⁴¹ ZOP, čl. 17 st. 2.

⁴² Pravilnik o evidenciji o posredovanju u prometu i zakupu nepokretnosti – Pravilnik br. 2, *Službeni glasnik RS*, br. 75/2014.

u stanje ugovora o obaveznom osiguranju posrednika, što otežava efikasnost nadzora (upravnog i inspekcijskog) nad poslovanjem posrednika i obavezom da u svakom trenutku svog poslovanja bude pokriven ugovorom o obaveznom osiguranju od odgovornosti za štetu pričinjenu nalogodavcu.

V. Obavezno osiguranje posrednika u prometu i zakupu nepokretnosti

1. Propisivanje da je uslov za obavljanje posredovanja upis u Registar, a da je jedan od uslova da se uz zahtev, pored ostalih dokaza, dostavi i važeći ugovor o osiguranju od odgovornosti za štetu zaključen u svemu prema čl. 13. ZOP-a (sa zakonski određenim minimalnim sumama osiguranja i s društvom za osiguranje koje ima sedište u Republici Srbiji) ukazuje na zakonsku obaveznost ovog osiguranja.

2. Na podlozi takvog propisivanja obaveznog osiguranja u ZOP-u, Narodna banka Srbije (NBS) prikazala je pravne izvore obaveznog osiguranja u Republici Srbiji.⁴³ Na internet stranici NBS, u rubrici Ostale informacije, pod naslovom Obavezna osiguranja u Republici Srbiji, tabelarno su prikazani zakoni i formulacije onih članova u tim zakonima koji su sadržali odredbe o obaveznim osiguranjima u zakonima Republike Srbije, kao i formulacije o obaveznom osiguranju.⁴⁴ U ovom prikazu NBS obuhvaćeni su ZOP i Pravilnik br. 1.⁴⁵

3. Međutim, izvorna koncepcija ministarstva za trgovinu u odnosu na obavezno osiguranje posrednika bila je izložena u Službenom obrazloženju Predloga zakona o prometu i zakupu nepokretnosti.⁴⁶ Upravo deo koncepcije koji se odnosio na pitanja obaveznog osiguranja posrednika bio je sadržan u podnaslovu – Objašnjenje osnovnih pravnih instituta i pojedinačnih rešenja. U tom podnaslovu za čl. 13 ZOP-a je bilo navedeno sledeće: da se „obavezuje posrednik da u svakom trenutku poslovanja ima važeći ugovor o osiguranju od odgovornosti za eventualnu štetu koju bi povredom ugovornih obaveza preuzetih ugovorom o posredovanju mogao da nanese nalogodavcu, što predstavlja potpunu novinu u pravnoj regulativi u oblasti prometa i zakupa nepokretnosti“.⁴⁷ Koncepcija ministarstva u pogledu obaveznog

⁴³ Sektor za nadzor nad obavljanjem delatnosti osiguranja Narodne banke Srbije: „Obavezna osiguranja u Republici Srbiji“, jun 2021, str. 7.

⁴⁴ <https://www.nbs.rs/sr/finansijske-institucije/osiguranje> – pristup 27. 7. 2022.

⁴⁵ Pravilnik o Registru posrednika u prometu i zakupu nepokretnosti – Pravilnik br. 1, *Službeni glasnik RS*, br. 75/2014, 88/2018 i 105/2020.

⁴⁶ Službeno obrazloženje Predloga zakona o posredovanju u prometu i zakupu nepokretnosti, Podnaslov – Objašnjenje osnovnih pravnih instituta i pojedinačnih rešenja, otvorenavlada.rs/pz-nepokretnosti084-lat-doc-2, čl. 13, str. 11.

⁴⁷ Službeno obrazloženje Predloga zakona o posredovanju u prometu i zakupu nepokretnosti, Podnaslov – Objašnjenje osnovnih pravnih instituta i pojedinačnih rešenja, otvorenavlada.rs/pz-nepokretnosti084-lat-doc-2, čl.13, str. 11.

osiguranja bila je zasnovana na obavezi posrednika da u svakom trenutku svog poslovanja bude pokriven važećim ugovorom o osiguranju. Zakonske odredbe o obaveznom osiguranju u ZOP-u napustile su izvornu koncepciju ministarstva i nisu izričito propisale da posrednik mora da ima ugovor o osiguranju u svakom trenutku svog poslovanja sa posredovanjem u prometu i zakupu nepokretnosti.

4. Osiguranje od odgovornosti za štetu izloženo je u dva člana ZOP-a. U čl. 5 st. 1 tač. 2 ZOP-a predviđeno je da važeći ugovor o osiguranju bude zaključen u skladu sa čl. 13 ZOP-a. Smisao te formulacije bio je da se podnosilac zahteva legitimše u postupku upisa u Registar s primerkom važećeg ugovora o osiguranju, koji je bio zaključen u skladu sa navedenim članom. Taj ugovor je podnosiocu zahteva omogućavao da ministarstvu za trgovinu dokaže da je ispunio traženi uslov za registraciju i da stekne status posrednika. Drugi član u kome se govorilo o osiguranju je čl. 13 ZOP-a. Čl. 13 st. 1 ZOP-a predvideo je da je posrednik dužan da s društvom za osiguranje koje ima sedište u Republici Srbiji ima važeći ugovor o osiguranju od odgovornosti za štetu koja bi mogla da nastane za nalogodavca usled neispunjenja ugovornih obaveza iz čl. 15 ZOP-a, kao i obaveza propisanih čl. 16 ZOP-a. Čl. 13 st. 2 ZOP-a je predvideo da za štetu koju bi posrednik mogao da prouzrokuje nalogodavcu obavljanjem posredovanja suma osiguranja iznosi minimalno 15.000 evra u dinarskoj protivvrednosti po jednom osiguranom slučaju, odnosno ukupno minimalno 45.000 evra u dinarskoj protivvrednosti za sve odštetne zahteve u jednoj godini osiguranja. Čini se da navedene formulacije čl. 13 određuju sadržinu ugovora o osiguranju bez koje taj ugovor ne bi bio pravno važeći. Uvidom u pozitivne zakone iz najbližeg okruženja, koji regulišu materiju posredovanja u prometu nepokretnosti, može se zaključiti kako se reguliše obavezno osiguranje posrednika i obezbeđuje da posrednik redovno obnavlja ugovor o osiguranju.

5. Skoro jednu deceniju pre donošenja ZOP-a regulisano je zakonom obavezno osiguranje posrednika u Republici Sloveniji. Zakon o nepremičninskom posredovanju predvideo je obavezno osiguranje na sledeći način: da se pre otpočinjanja posredovanja u prometu nekretnina posrednik mora osigurati i za sve vreme trajanja posredovanja u prometu nekretnina mora biti osiguran od odgovornosti za štetu koja bi mogla nastati nalogodavcu ili trećem licu povredom ugovora o posredovanju na teritoriji Republike Slovenije.⁴⁸ Slovenački ZNPors je predvideo da je posrednik dužan da za sve vreme trajanja posredovanja u prometu s nekretninama bude obavezno osiguran, kao i da obnavlja ugovor o osiguranju.

6. Hrvatski Zakon o posredovanju u prometu nekretnina karakteriše sledeća norma. Posrednik u prometu nekretnina (dalje u tekstu: posrednik) dužan je kod osiguravača u Republici Hrvatskoj osigurati i obnavljati osiguranje od odgovornosti

⁴⁸ Zakon o nepremičninskom posredovanju – ZNPors, *Uradni list RS*, br. 42/2003, 21/2006 – Odluka US, 47/2006, 50/2006-dr.zakon, 72/2006-službeni prečišćeni tekst, 49/2011 i 47/2019, čl. 6 st. 1.

za štetu koju bi nalogodavcu ili trećim osobama mogao prouzročiti obavljanjem posredovanja.⁴⁹ Iz ZOPHr proizlazi dužnost za posrednika da se osigura i da obnavlja osiguranje od odgovornosti za štetu nalogodavcu ili trećem licu, koju bi mogao da prouzrokuje posredovanjem. ZOPHr je donet skoro sedam godina pre ZOP-a.

7. U Zakonu o posredovanju u prometu nepokretnosti Republike Srpske predviđeno je obavezno osiguranje.⁵⁰ Prema ZOPRS, posrednik je dužan osigurati se za štetu koju bi nalogodavcu ili trećim licima mogao prouzrokovati obavljanjem posredovanja, kod osiguravajućeg društva sa sedištem u Republici, odnosno BiH.⁵¹ Posrednik je dužan da za vreme obavljanja delatnosti posredovanja u prometu nepokretnosti poseduje važeću polisu osiguranja.⁵² S obzirom na to da je ZOPRS donet posle ZOP-a, treba ukazati na dve obaveze posrednika. Prema prvoj zakonskoj obavezi, posrednik se mora osigurati, a prema drugoj zakonskoj obavezi, posrednik mora posedovati polisu osiguranja za sve vreme obavljanja delatnosti posredovanja u prometu nepokretnosti.

8. Federacija BiH donela je Zakon o posredovanju u prometu nekretnina i u njemu je predviđeno da je posrednik dužan kod osiguravajućeg društva u BiH osigurati se i obnavljati osiguranje od odgovornosti za štetu koju bi nalogodavcu ili trećem licu mogao prouzrokovati obavljanjem posredovanja.⁵³ Iz ZOPBiH proizlazi da je posrednik obavezan da se osigura i da obnavlja obavezno osiguranje od odgovornosti.

9. Prethodna četiri zakona iz materije posredovanja u prometu nepokretnosti ukazuju na tendenciju po pitanju kako u skladu s pravom osiguranja treba regulisati obavezno osiguranje posrednika. Najpre, iz navedena četiri zakona proizlazi da je u svim zakonima imperativnim normama predviđeno da se posrednik izričito mora obavezno osigurati. Slovenački ZNPosr i ZOPRS u odredbama o obaveznom osiguranju naglasili su dužnost posrednika da se osigurava za sve vreme obavljanja delatnosti posredovanja u prometu s nekretninama. Kod ostala dva zakona se to podrazumeva na taj način što su predvideli dužnost za posrednika da obnavlja obavezno osiguranje.

10. Do sada je bilo reči o preduzetniku i privrednom društvu kao posrednicima. Ti subjekti postali su predmet teorijskog objašnjenja u pravu obaveznog osiguranja.⁵⁴ Pošlo se od konstatacije da je doneto više zakona u kojima je uvedeno obavezno osiguranje, a da su u tim zakonima adresati obaveznog osiguranja

⁴⁹ Zakon o posredovanju u prometu nekretnina – ZOPHr, *Narodne novine RH*, br. 107/2007, 144/2012, 14/2014 i 32/2019, čl. 5 st. 1.

⁵⁰ Zakon o posredovanju u prometu nepokretnosti – ZOPRS, *Službeni glasnik Republike Srpske*, br. 99/2020, čl. 6.

⁵¹ ZOPRS, čl. 6 st. 1.

⁵² ZOPRS, čl. 6 st. 4.

⁵³ Zakon o prometu nekretnina – ZOPBiH, *Službene novine Federacije BiH*, br. 75/2021, čl. 5 st. 1.

⁵⁴ Prof. dr Slobodan Jovanović, „Institucionalno regulisanje osiguranja davalaca usluga u Evropskoj uniji i Republici Srbiji“, *Zbornik Udruženja za pravo osiguranja Srbije*, 2012, 257.

preduzetnici i pravna lica, ovde privredna društva. Objašnjenje je preciziralo – ako je u pitanju preduzetnik kao adresat obaveznog osiguranja u zakonu, onda treba zaključiti da se radi o osiguranju od profesionalne odgovornosti, a ako je u pitanju pravno lice kao adresat obaveznog osiguranja u zakonu, onda treba zaključiti da se radi o osiguranju od poslovne odgovornosti. To teorijsko objašnjenje izloženo je pre donošenja ZOP-a, ali se može primeniti na adresate obaveznog osiguranja u ZOP-u, odnosno na preduzetnika i privredno društvo kao pravno lice.

11. ZOP je propisao imperativnim normama da je posrednik dužan da vodi evidenciju o svom poslovanju, uz propisano preciziranje sadržaja te evidencije. Iz tih zakonskih normi Kompanija „Dunav osiguranje“ a. d. o. kreativno je donela Odluku o Uslovima za osiguranje profesionalne odgovornosti posrednika u prometu i zakupu nepokretnosti (u daljem tekstu: Posebni uslovi). Posebni uslovi su predvideli obaveznu kontrolu Evidencije o posredovanju svog osiguranika – posrednika.⁵⁵ Prema čl. 11 st. 1 Posebnih uslova, osiguranik je obavezan da osiguravaču prilikom zaključenja ugovora o osiguranju dostavi Evidenciju o posredovanju za sve važeće ugovore o posredovanju. Prema čl. 11 st. 2 Posebnih uslova, osiguranik je u toku trajanja osiguranja dužan da osiguravaču mesečno dostavlja ažuriranu Evidenciju o posredovanju koju vodi u skladu sa Zakonom o posredovanju u prometu i zakupu nepokretnosti. To se može bolje razumeti ako se ima u vidu da je pre donošenja ZOP-a ugovor o posredovanju bio konsensualan, odnosno mogao se dokazivati konkludentnom radnjom.⁵⁶ Stupanjem na snagu ZOP-a taj ugovor je postao formalan, a vreme konsensualnosti ugovora o posredovanju u Republici Srbiji je prošlo vreme. Dakle, Kompanija „Dunav osiguranje“ a. d. o. je putem Posebnih uslova od posrednika – osiguranika zahtevala uvid u dotadašnje i tekuće poslovanje sa posredovanjem u prometu i zakupu nepokretnosti. Takav pristup osiguranju posrednika svakako treba pohvaliti.

Zaključci

1) Donošenjem Zakona o posredovanju u prometu i zakupu nepokretnosti uveden je red u oblast posredovanja u prometu i zakupu nepokretnosti prema evropskim standardima, što doprinosi razvoju tržišta nepokretnosti u Republici Srbiji. Prvi put u Republici Srbiji zakon je konstituisao posrednika kao delatnost i time je podignut kvalitet posredničkih usluga, kako za kupce tako i za prodavce nepokretnosti, bez obzira na to da li se radilo o fizičkom ili pravnom licu. Publikovanjem Registra posrednika na internet stranici ministarstva za trgovinu pružena je

⁵⁵ Uslovi za osiguranje profesionalne odgovornosti posrednika u prometu i zakupu nepokretnosti – Posebni uslovi, *Službeni list Kompanije „Dunav osiguranje“ a.d.o.*, Sl. 19/15 od 7. 4. 2015, čl. 11.

⁵⁶ Prof. dr Ivica Jankovec, *Privredno pravo*, 1981, 377.

podrška legalnom poslovanju, suzbijanju sive ekonomije i jačanju konkurencije u oblasti posredovanja u prometu i zakupu nepokretnosti.

2) Propisivanjem pri registraciji posrednika obaveznog osiguranja od odgovornosti za štetu koja bi mogla biti prouzročena nalogodavcu u izvršavanju ugovora o posredovanju zakonodavac u Republici Srbiji je značajno poboljšao pravnu sigurnost u prometu i zakupu nepokretnosti.

3) Predlaže se noveliranje čl. 13 st. 1 Zakona o posredovanju u prometu i zakupu nepokretnosti. Jedan od načina za noveliranje čl. 13 st. 1 ZOP-a mogao bi da glasi da posrednik za sve vreme obavljanja posredovanja u prometu i zakupu nepokretnosti mora da poseduje polis obaveznog osiguranja od odgovornosti za štetu prouzrokovanu nalogodavcu ili trećem licu, koja bi mogla da nastane u izvršavanju ugovora o posredovanju, te da je redovno obnavlja. Kao i do sada, u čl. 13 st. 2 ZOP-a bile bi izložene minimalne sume osiguranja po jednom osiguranom slučaju i minimalna suma osiguranja za sve odštetne zahteve u jednoj godini osiguranja.

Literatura

- Čurković, M., *Osiguranje od izvanugovorne i ugovorne (profesionalne) odgovornosti*, Zagreb, februar 2015, 249.
- Hiber, D., „Predugovor obezbeđen kaparom kod ugovora o prometu nepokretnosti u pravu Srbije“, *Anali Pravnog fakulteta u Beogradu*, br. 3/2018, 58.
- Ivanjko, Š., „Posrednici u osiguranju u pravu Republike Slovenije, Hrvatske i Federacije BiH“, *Osiguranje* br. 5/2005, 84.
- Jankovec, I., *Privredno pravo*, 1981, 377.
- Jerković, S., „Zaključivanje ugovora o prometu nepokretnosti preko agencije“, *Pravni život* br. 9-10/1993, 935.
- Jovanović, S., „Institucionalno regulisanje osiguranja davalaca usluga u Evropskoj uniji i Republici Srbiji“, *Zbornik Udruženja za pravo osiguranja Srbije*, 2012, 257.
- Ministarstvo za trgovinu, turizam i telekomunikacije: „Registar u elektronskom obliku“, www.mtt.gov.rs
- Orlić, M., „Zakup“, u *Komentar Zakona o obligacionim odnosima* (Gl. urednik Prof. dr S. Perović), 1995, 1034.
- Pravilnik o stručnom ispitu za posrednika u prometu i zakupu nepokretnosti, sa Programom polaganja stručnog ispita za obavljanje poslova posrednika u prometu i zakupu nepokretnosti, *Službeni glasnik RS*, 75/2014, 39/2017, 78/2018 i 98/2020.
- Pravilnik o Registru posrednika u prometu i zakupu nepokretnosti, *Službeni glasnik RS*, br. 75/2014, 88/2018 i 105/2020.

- Pravilnik o evidenciji o posredovanju u prometu i zakupu nepokretnosti, *Službeni glasnik RS*, br. 75/2014.
- Sektor za nadzor nad obavljanjem delatnosti osiguranja Narodne banke Srbije, „Obavezna osiguranja u Republici Srbiji“, Beograd, jun 2021, 7, <https://www.nbs.rs/sr/finansijske-institucije/osiguranje>
- Sentenca iz presude Vrhovnog kasacionog suda Rev. 1137/2020 od 22.10.2020. godine, utvrđena na sednici Građanskog odeljenja od 7. decembra 2021. godine, <https://www.vk.sud.rs/sr-lat/rev-11372020-31233>
- Službeno obrazložene Predloga zakona o posredovanju u prometu i zakupu nepokretnosti, otvorenavlada.rs/pz-nepokretnosti084-lat-doc-2, čl. 13, str. 11.
- Uslovi za osiguranje profesionalne odgovornosti posrednika u prometu i zakupu nepokretnosti Kompanije „Dunav osiguranje“ a.d.o., *Službeni list Kompanije*, Sl. 19/15 od 07.04.2015.
- Ustav Republike Srbije, *Službeni glasnik RS*, br. 98/2006, 115/2021 i 16/2022.
- Velimirović, M., „Ugovor o posredovanju“ u *Enciklopediji imovinskog prava i prava udruženog rada*, 1978, 560.
- Vukotić, Đ., „Pružanje pravnih usluga na tržištu nekretnina“, *Pravni život* br. 9-10/1993, 926.
- Zakon o posredovanju u prometu i zakupu nepokretnosti, *Službeni glasnik RS*, 95/2013, 41/2018 i 91/2019.
- Zakon o sprečavanju pranja novca i finansiranja terorizma, *Službeni glasnik RS*, br. 113/2017, 91/2019 i 153/2020.
- Zakon o prometu nepokretnosti, *Službeni glasnik RS*, br. 93/2014, 121/2014 i 6/2015.
- Zakon o proceniteljima vrednosti nepokretnosti, *Službeni glasnik RS*, br. 108/2016 i 113/2017-dr. zakon.
- Zakon o opštem upravnom postupku, *Službeni glasnik RS*, br. 18/2016 i 95/2018-Autentično tumačenje.
- Zakon o nepremičninskom posredovanju, *Uradni list RS*, br. 42/2003, 21/2006-Odluka US, 47/2006, 50/2006-dr. zakon, 72/2006-službeni prečišćeni tekst, 49/2011 i 47/2019.
- Zakon o posredovanju u prometu nekretnina, *Narodne novine*, br. 107/2007, 144/2012, 14/2014 i 32/2019.
- Zakon o posredovanju u prometu nepokretnosti Republike Srpske, *Službeni glasnik Republike Srpske*, br. 99/2020.
- Zakon o posredovanju u prometu nekretnina, *Službene novine Federacije BiH*, br. 75/2021.

Slobodan N. Ilijić, LL.M.¹

SOME ISSUES OF MANDATORY INSURANCE OF PROPERTY SALES AND LEASE AGENTS

PROFESSIONAL PAPER

Abstract

The author considers the activity of agency in the sale and lease of real property and the mandatory insurance of agents. This activity was introduced into the legal system of the Republic of Serbia for the first time under the Law on Agency in Real Property Sales and Lease (ZOP). The new activity was perfected within the legal system by introducing changes in the requirements for registration in the Register of Agents. The improvement of the activity lasted from November 2013, when the ZOP was adopted, until January 2020, when the last amendment to the ZOP began to be applied. One of the stipulated requirements for registration into the Register of Agents provided for the submission of a valid insurance contract concluded in accordance with Article 13 of the Law on Agency in Real Property Sales and Lease. By making a connection between the provisions of the ZOP on mandatory insurance and the Official Explication under Law on Agency in Real Property Sales and Lease, the author established that the provisions of the Law did not give a clear answer to an agent whether he had to renew a valid insurance contract after having done the registration. The author tries to overcome the stated ambiguity of the provisions of the Law on Agency in Real Property Sales and Lease by proposing, in the conclusions, a wording that corresponds to the comparative legal solutions on the mandatory insurance of property sales and lease agents.

Keywords: *law, agent, sale and lease of real property, register of agents, mandatory insurance*

¹ Member of the Presidency of the Association of Lawyers of Serbia
Paper received on September 1, 2022
Paper accepted on February 2, 2023

Introduction

The Law on Agency in Real Property Sales and Lease was adopted in 2013². In the time span from November 2013 to January 2020, the Law on Agency in Real Property Sales and Lease perfected the new activity of agency in real property sales and lease by tightening the conditions for registration in the Register of Agents. Despite the changes in the Law on Agency in Real Property Sales and Lease regarding the requirements for registration in the Register of Agents, the second requirement for such registration – a valid insurance contract – has not changed from 2013 until today. The official explanation of the Draft Law on Agency in Real Property Sales and Lease announced the introduction of mandatory insurance for each and every moment of the agent's business. The provisions of the Law on Agency in Real Property Sales and Lease clearly stipulate that, in the course of registration, the applicant has to legitimize himself by a valid insurance contract in order to obtain a status of an agent, but it is not clear whether after acquiring such a status, the agent needs to renew the insurance contract.

I. Emergence of Real Property Sales Agency Service Providers in SFRY

The emergence of real property agency service providers was noticed in the SFRY at the end of the 20th century. According to some opinions, they appeared spontaneously in Slovenia, Croatia and BiH in the 90s of the 20th century.³ At the same time, they also appeared in Serbia, where they were referred to as real property agency, private broker registered as a real property agency, real property sales enterprise, etc.⁴ The key event for the emergence of agency service providers in real property transactions occurred with the transition of the majority of apartments from social ownership to private ownership, as well as with only partial restitution of land, which increased the disposal intensity of real property.⁵ After such developments, the awareness and political will gradually matured in the then already independent states of the former republics of the SFRY, as regards the regulation of the real property

² The Law on Agency in Real Property Sales and Lease – ZOP, *Official Gazette of the RS*, nos. 95/2013, 41/2018 and 91/2019

³ Prof. Šime Ivanjko, PhD: "Insurance intermediaries in the law of the Republic of Slovenia, Croatia and the Federation of Bosnia and Herzegovina", *Insurance* no. 5/2005, 84; Prof. Marijan Čurković, PhD: *Osiguranje od izvanugovorne i ugovorne (profesionalne) odgovornosti*, Zagreb, 2015, 249

⁴ Slavica Jerković, director of "Stankom" bureau: "Conclusion of contracts on real estate sales through an agency", *Pravni život* no. 9-10/1993, 935; Đorđe Vukotić, lawyer: "Providing legal services on the real estate market", *Pravni život* no. 9-10/1993, 926 et all.

⁵ Ibidem

transactions by a special law and the introduction of mandatory insurance of agents, following the example of developed economies. Just before the adoption of the Law on Agency in Real Property Sales and Lease in the Republic of Serbia, it was estimated that the realized annual turnover of real property was worth three billion euros and that the value of unpaid taxes was between 600 million and two billion dinars.⁶ These data triggered the adoption of ZOP. In the first decade of the 21st century, the republics of the former SFRY commonly introduced, by law, the activity of agency in real property transactions and the mandatory insurance of agents.

II. Introduction of Agency in Real Property Sales and Lease into Legal System of the Republic of Serbia

1. Basic requirements for the introduction of this activity into the legal system of the Republic of Serbia were foreseen under the 2013 Law on Agency in Real Property Sales and Lease. However, in 2017, those basic requirements became inadequate, since the new Law on Prevention of Money Laundering and Financing of Terrorism was adopted.⁷ The Law on Prevention of Money Laundering and Financing of Terrorism expressly provided for an agent in the sales and lease of real property as one of the direct obligees of that law. For the purpose of achieving the legislative and legal compliance of the ZOP with the Prevention of Money Laundering and Financing of Terrorism, the 2018 Amendment to the Law on Agency in Real Property Sales and Lease was adopted.⁸ In the following year, 2019, the amendment to the Law on Prevention of Money Laundering and Financing of Terrorism was adopted.⁹ For achieving the legislative and legal compliance of the Law on Agency in Real Property Sales and Lease with the 2019 Amendment to the Law on Prevention of Money Laundering and Financing of Terrorism, the 2019 Amendment to the Law on Agency in Real Property Sales and Lease was adopted.¹⁰ The 2018 Law on Agency in Real Property Sales and Lease Amendment and the 2019 Law on Agency in Real Property Sales and Lease Amendment have one common trait - they both relate only to the issues of registration of real property sales and lease agents.

⁶ Data stated in the Official Explication of the Draft Law on Agency in Real Property Sales and Lease, *otvorenavlada.RS/PZ-nepokretnosti084-lat-doc-2*, accessed on 28th July 2022.

⁷ Law on Prevention of Money Laundering and Financing of Terrorism, *Official Gazette of the RS*, No. 113/2017

⁸ The Law on Amendments to the Law on Agency in Real Property Sales and Lease – Amendment to the Law on Agency in Real Property Sales and Lease (ZOP) of 2018, *Official Gazette of the RS*, no. 41/2018.

⁹ Law on Amendments to the Law on Prevention of Money Laundering and Financing of Terrorism of 2019, *Official Gazette of the RS*, no. 91/2019.

¹⁰ The Law on Amendments to the Law on Agency in Real Property Sales and Lease of 2019, *Official Gazette of the RS*, no. 91/2019.

2. The gradual introduction of the activity of agency into the legal system of the Republic of Serbia was made possible by the legislative and legal technique, which was used in the legislation in the second decade of the XXI century. Namely, the 2013 Law on Agency in Real Property Sales and Lease from entered into effect on the 8 November 2013 but, in the transitional and final provisions, it prescribed two deadlines for postponing the implementation of particular articles.¹¹ The first deadline referred to the Article 11 of the Law on Agency in Real Property Sales and Lease and provided that the Article was to be applied starting from the twelfth month of the date of entry into force of the Law. That meant that the implementation of the Article 11 of the ZOP was postponed for the period after November 9, 2014. The subject-matter of the Article 11 of the Law on Agency in Real Property Sales and Lease was the organization and passing of a professional examination by an individual who was interested in working with an entity for real property sales and lease. The second deadline referred to the Articles 4-10 and the Article 13 of the ZOP and provided that the relevant group of articles should apply starting from the eighteenth month as of the date of entry into force of the Law. That meant that the implementation of the Articles 4-10 and the Article 13 of the ZOP was postponed for the period after 9 May 2015. The group of Articles 4-10 of the ZOP regulated four requirements for registration in the Register of Agents and the Article 13 of the ZOP regulated only one requirement for registration in the Register of Agents. In other words, if the deadlines for the application of provisions under the 2018 Amendment to the ZOP and from the 2019 Amendment to the ZOP are added to the stated deadlines for the postponed implementation under the standard wording of the ZOP, it follows that the valid text of the provisions of the ZOP has begun to apply from January 1, 2020. Therefore, the introduction of the new activity of real property sales and lease agency into the legal system of the Republic of Serbia was realized gradually, by amending the Law on Agency in Real Property Sales and Lease in the time interval 2013-2020.¹²

3. The gradual introduction of agency activities aimed at introducing the requirements for registration into the Register of Agents (Register). By entering into the Register, the applicant acquired the status of an agent.¹³ The Law on Agency in Real Property Sales and Lease prescribed that the Register in written and electronic form is maintained by the Ministry of Trade.¹⁴ In the introductory articles of the Law on Agency in Real Property Sales and Lease, the previous legal issue of the registration

¹¹ ZOP, Art. 36

¹² For greater details on the legal institute of lease, please check the Assistant Professor Miodrag Orlić, PhD: "Lease", in the *Commentary to the Law on Contracts and Torts* (editor in chief, Prof S. Perović, PhD), 1995, 1034

¹³ ZOP, Art. 4 in connection with Art. 5

¹⁴ ZOP, Art. 3 item 3.

of agents was resolved – it was defined who could acquire the status of an agent by registering into the Register. Out of numerous entities, the editor of the Law on Agency in Real Property Sales and Lease singled out a business company and an entrepreneur as applicants who could acquire the status of an agent. In this way, the Law on Agency in Real Property Sales and Lease established the main legal rule regarding the registration of agents. The legal rule read: The agent shall be a business company, that is, an entrepreneur with headquarters in the Republic of Serbia and registered in the Register.¹⁵

4. Several prohibitions were derived from the main legal rule of the Law on Agency in Real Property Sales and Lease, relating to the unauthorized performance of agency in the sale and lease of real property. First, the ZOP prohibited an entity or individual that have not been not registered in the Register to carry out the agency business.¹⁶ Moreover, the Law prohibited an individual who has not passed a professional exam to perform agency work with an agent.¹⁷ Finally, the ZOP prohibited an individual who has passed a professional exam to simultaneously perform agency activities for two or more agents, i. e. services related to the work that is the subject-matter of agency, as well as to carry out other activities aimed at connecting persons for the purpose of sales and lease of real property, except with the written consent of all intermediaries participating in the business and provided the ordering parties and the persons who will eventually conclude the business with them have been informed of it.¹⁸ At the end of the Chapter on the introduction of agency in the legal system of the Republic of Serbia, it should be noted that the pending legal issue as regards the possible actors who could engage in agency business was thus resolved and the main legal rule of the ZOP was established – the agent shall be either a company or an entrepreneur, headquartered in the Republic of Serbia and registered into the Register.

5. The main legal rule under the Law on Agency in Real Property Sales and Lease was accepted in the court practice, as well. For example, in one of its sentences adopted after the entry into force of the Law, the Supreme Court of Cassation expressed their view that the necessary requirement for the legitimate performance of real property sales and lease agency activity and the entitlement to an agency fee was that an individual or an entity practicing that activity were registered in the Register.¹⁹

¹⁵ ZOP, art. 3 point 2

¹⁶ ZOP, Art. 12 paragraph 1

¹⁷ ZOP, Art. 12 paragraph 2

¹⁸ ZOP, Art. 12 paragraph 3

¹⁹ The sentence from the judgment of the Supreme Court of Cassation Rev. 1137/2020 of 22. 10. 2020, determined at the session of the Civil Department of the Supreme Court of Cassation of 07 April 2021.

III. Explanation of Legal Terms

1. Law on Agency in Real Property Sales and Lease (ZOP) is a short law comprising only 37 Articles, so the terms used in the Law were not defined. Among the terms used in the Law on Agency in Real Property Sales and Lease is the term real property. The parent law for defining the concept of immovable property is the Law on Real Property Sales (ZPN).²⁰ The ZPN provided that the immovable property included land (agricultural, construction, forests and forest land), buildings (business, residential, residential-business, economic, etc.) and other construction facilities as well as special parts of buildings (apartments, business premises, garages and garage spaces) where there might be a separate title.²¹ The concept of immovable property under the Law on Real Property Appraisers is in agreement with the mentioned term.²² Therefore, from the point of view of the ZOP, the meaning of the term immovable property should not be disputed.

2. The concept of real property is also related to a legal phrase – sales of real property – mentioned a few times in the ZOP. According to one opinion, the sales of real property is considered an expression that indicates the transfer (transition) of subjective civil rights or powers from one subject to another.²³ The author of this paper agrees with the stated opinion, which was presented on a completely different occasion. Therefore, the solutions of ZOP might be understood if the phrase *real property sales* was accepted to mean what has been said.

IV. Registration of Agents for Sales and Lease of Real Property

1. In the period 2013–2020, the requirements for registration in the Register were altered. It was important to fulfil the requirements for registration in the Register, having in mind the fact that the Ministry of Trade registered an agent for an unlimited period of time or as long as they performed the agency activities or until they were removed from the Register. On the day of the adoption of the Decision on entry into the Register (the day of adoption of the decision is considered the day of entry into the Register), the agent could start practising agency in the sales and lease of real property.²⁴

²⁰ Law on Real Property Sales – ZPN, *Official Gazette of the RS*, nos. 93/2014, 121/2014 and 6/2015

²¹ ZPN, Article 1 paragraph 2

²² Law on Real Property Appraisers, *Official Gazette of the RS*, nos. 108/2016 113/2017-as amended, Art. 2 item 1

²³ Prof. Dragor Hiber, PhD: "Pre-contract secured by down payment in real estate contracts in Serbian law", *Annals of the Faculty of Law in Belgrade*, No. 3/2018 58, footnote 1

²⁴ ZOP, Art. 4 pp. 2

2. There are five requirements for registration, set under five items.²⁵ The ZOP stipulated as a **first requirement** that the applicant nominated at least one individual who previously had passed the professional exam and was full-time employee of the applicant. The Minister of Trade prescribed in the general deed by-law the program of passing the professional exam and the organization of the professional exam was foreseen as an integral part of that program.²⁶ The program for passing the professional exam is a respective program. **The second requirement** for registration in the Register implied that the applicant had to attach a valid insurance contract concluded in accordance with the Article 13 of the Law on Agency in Real Property Sales and Lease.²⁷ According to the Law on Agency in Real Property Sales and Lease, **the third requirement** for registration in the Register referred to evidence that the applicant possessed a suitable business premises in accordance with the Article 14 of the Law on Agency in Real Property Sales and Lease. In **the fourth requirement** for registration in the Law on Agency in Real Property Sales and Lease Register, it was foreseen that the applicant should, in their request, answer the questions about whether the applicant had ever been sentenced for a misdemeanor based on the Law on Agency in Real Property Sales and Lease and whether any protective measure had been imposed on him on the same basis.

3. Fifth requirement comprised several special requirements and specific obligations and included clearly requested answers to inquiries which the Ministry of Trade collected for the Registry in written form. The fifth requirement asked the applicant to indicate the positions of the person who runs the company and who runs the agency business, with the fact that such person could be the founder, that is, the owner, the actual owner, associate, member of the management body of the company and the representative of the company. The applicant was asked to name, among their employees, an individual or individuals who passed the professional exam. When it comes to the applicant – the entrepreneur – the fifth requirement stipulated that an individual be named in the application to whom the applicant entrusted the management of the business as a person capable of doing the business. A special fifth requirement included answering the question with regard to the named parties whether any of them had been convicted of a criminal offense in the Republic of Serbia or in a foreign country. Moreover, the fifth requirement stipulated that the applicant needed to answer the questions whether any of the named persons seriously violated regulations or repeated violations of regulations on prevention of money laundering and financing of terrorism. Finally, within the

²⁵ ZOP, Art. 5

²⁶ Rulebook on the professional exam for brokers in traffic and real estate leasing, with the Program for passing the professional exam for the performance of brokerage in traffic and real estate leasing, *Official Gazette of the RS*, No. 75/2014, 39/2017, 70/2018 and 98/2020

²⁷ ZOP, Article 5 para. 1, item 3

fifth condition, the Law provided for an answer to the question of whether any of the appointed persons were banned from performing the main activity as well as whether the responsible person in the legal entity was prohibited from performing the main activity. Therefore, the ZOP has foreseen justifiably strict conditions for the registration of agents.

4. The registration of agents included the application of the powers under the ZOP in connection with the Law on General Administrative Procedure.²⁸ By conducting the registration procedure, the Ministry of Trade was authorized to assess the regularity and legality of the application submitted by the person who, according to the ZOP, was eligible of acquiring the status of an agent. Evaluating the submitted application, the Ministry would encounter a situation where it would consider the application incomplete, for example, because the Requester could not obtain proof of the criminal record of the entrepreneur or the responsible person in the legal entity or the real owner of the company in the Republic of Serbia or abroad. In such a case, the ZOP stipulated the obligation for that applicant to subsequently submit a statement under criminal and material responsibility, with which they would be answering the question of whether they had ever been convicted and whether they were members of any organized criminal group.²⁹ Therefore, the Law on Agency in Real Property Sales and Lease prescribed that the procedure for the registration of agents is completed before the Minister of Trade either by rejecting the application for registration in the Register or by accepting the application and issuing a Decision on registration.³⁰ If the procedure based on the applicant's application ended up with a negative that is the rejecting decision, the dissatisfied applicant could initiate an administrative dispute.³¹

5. The registration of agents is based on one of the key powers of the Ministry of Trade to publish the Register on the website of the Ministry. On this occasion, it should be recalled that the ZOP expressly stipulated that the Register was publicly accessible and freely available to all persons without restrictions.³² Such right and obligation of state administration bodies according to the ZOP arose from the constitutional right of citizens to be informed.³³ The author of this paper reviewed the published Register in electronic form.³⁴ According to the registration numbers, the Register included more than 1,000 agents, but it was obvious that numerous

²⁸ Law on General Administrative Procedure - ZUP, *Official Gazette of the RS*, nos. 16/2016 and 95/2018 – authentic interpretation.

²⁹ ZOP, Art. 5 para. 3

³⁰ ZOP, Art. 4

³¹ ZOP, Art. 10 pp. 3

³² ZOP, Art. 7

³³ Constitution of the Republic of Serbia, *Official Gazette of the RS*, 98/2006, 115/2021 and 16/2006, art. 51

³⁴ The website of the Ministry of Trade, Tourism and Telecommunications with the Register of Intermediaries, www.mtt.gov.rs, accessed on 31. 7. 2022.

agents had previously been deleted. The Register in electronic form comprised the following sections: serial number, type of agent, name and address, branch address, name and surname of the entrepreneur or company name, telephone and electronic address, website address, Taxpayer's no and registration no. In the opinion of the author of this paper, the Register in electronic form lacked a column, for each agent, on the existence or non-existence of another requirement for registration into the Register, that is, on the existence or non-existence of a valid insurance contract in accordance with the Article 13 of the ZOP. Every client, an ordering party, would be interested in this free information before concluding an agency agreement with an agent and during the contractual relationship.³⁵

6. The registration of agents includes two important legal institutes. **First**, the ZOP regulated the institution of deleting agents from the Register.³⁶ In five items, the ZOP prescribed the reasons for deleting agents from the Register. The Decision on Deletion from the Register is made by the Minister of Trade on the basis of data obtained from public records and data determined in the supervision procedure (administrative and inspection).³⁷ The Decision of the Minister of Trade is final and the agent can initiate an administrative dispute against that decision.³⁸ The first reason for deleting an agent from the Register envisaged a situation in which the agent ceased to fulfill one of the five requirements prescribed for entry into the Register.³⁹ Since the valid insurance contract concluded in accordance with the Article 13 of the ZOP was one of the requirements for entry into the Register, the mere absence of that condition after registration would be the reason for deleting the agent from the Register. The Ministry of Trade, through the administrative supervision of a particular agent, and the market inspector, during the inspection of the agent's business premises, are entitled to ask the agent at any time to inspect a valid insurance contract concluded in accordance with the Article 13 of the ZOP. If, during the supervision, it is determined that, for example, the period for which the specific insurance contract was concluded has expired or if the contracted insurance is inconsistent with the Article 13 of the ZOP, the market inspector shall state through the record that the agent does not have a valid insurance contract concluded in accordance with the Article 13 of the ZOP. The end of such administrative procedure is well known. The requirement for deletion from the Register is thus fulfilled regardless of the fact that, at the moment of acquiring the status, the agent had maintained a concluded insurance contract in accordance with the Article 13 of the ZOP. In this case,

³⁵ For more detail, see Prof. Mihailo Velimirović, PhD: "Agreement on Mediation", *Encyclopaedia of property law and collective labor law*, 1978, 560

³⁶ ZOP, Art. 10 para. 1, 2 and 3

³⁷ ZOP, Art. 10 para. 2

³⁸ ZOP, Art. 10 para. 3

³⁹ ZOP, Art. 10, para. 1 item 1

the Minister of Trade is authorized to issue a decision on deleting agents from the Register. The client, the ordering party can not see from the electronic Register that the administrative or inspection supervision had been carried out over him, because there is no section in the electronic Register on the existence or non-existence of mandatory insurance of an agent. Hence, the ZOP should explicitly and clearly prescribe the agent's obligation to renew the insurance contract, given that a clear and explicit obligation of the agent has not been yet provided for in the ZOP. **Second**, the ZOP stipulated the obligation of agents to keep records of agency.⁴⁰ According to the imperative norms of the ZOP, such record included data on agency contracts under the Article 15 of the ZOP, data on subagency contracts under the Article 29 of the ZOP, especially data on the ordering party, the real property whose sale or lease is the subject of the agency as well as on the outcome of the agency and the agency fee.⁴¹ In the general deed by-law, the records that the agent is obliged to keep permanently are taken over from the ZOP.⁴² However, the agent's mandatory records do not mention a valid insurance contract referred to under the Article 5 para. 1 item 2 of the ZOP, nor a valid insurance contract under the Article 13 of the ZOP. This practically means that the legally prescribed records do not allow the market inspector to inspect the state of the agent's mandatory insurance contract in the agent's business premises, which hinders the effectiveness of supervision (administrative and inspection) over the agent's business and the obligation to be covered at all times by mandatory liability insurance contract against damages inflicted upon third ordering party.

V. Mandatory Insurance of Agents in Real Property Sales and Lease

1. Prescribing that the condition for carrying out agency is registration in the Register, and that one of the conditions is to submit a valid liability insurance contract with the request, in addition to other evidence, concluded in all respects according to Art. 13. of ZOP (with legally defined minimum insurance sums and an insurance company headquartered in the Republic of Serbia) indicates the legal obligation of this insurance.

2. On the basis of such prescription of mandatory insurance under the ZOP, the National Bank of Serbia (NBS) presented the legal sources of mandatory insurance in the Republic of Serbia.⁴³ The laws and wording of the relevant articles thereof

⁴⁰ ZOP, Art. 17, para. 1

⁴¹ ZOP, Art. 17, para. 2

⁴² Rulebook on evidence on agents in real property sales and lease – Rulebook no. 2, *Official Gazette of the RS*, no. 75/2014

⁴³ Department for Supervision of Insurance Activities of the National Bank of Serbia: "Mandatory Insurance in the Republic of Serbia", June 2021, pp. 7.

that contained provisions on mandatory insurance under the laws of the Republic of Serbia as well as the mandatory insurance wordings were tabulary presented on the NBS website, in the section Other information, under the heading Mandatory Insurance in the Republic of Serbia.⁴⁴ This presentation of the NBS includes the Law on Agency in Real Property Sales and Lease and Rulebook no. 1.⁴⁵

3. However, the original conception of the Ministry of Trade in relation to the mandatory insurance of agents was set forth in the Official Explication of the Law on Real Property Sales and Lease.⁴⁶ Precisely the part of the concept that related to the issues of mandatory insurance of agents was contained in the subtitle – Explication of basic legal institutes and individual solutions. In that subtitle, the following was said for the Article 13 of the ZOP: “the agent shall at all times maintain a valid liability insurance contract against any damages that he could inflict upon the ordering party by violating the contractual obligations assumed under the agency agreement, which represents a complete novelty in the legal regulation in the area of real property sales and lease”.⁴⁷ The concept of the Ministry regarding mandatory insurance was based on the obligation of agent to be covered by a valid insurance contract at all times during the conduct of their business. The legal provisions on mandatory insurance under the ZOP left the original conception of the Ministry and did not explicitly prescribe that the agent must have an insurance contract at all times of conduct of his business with the agency for real property sales and lease.

4. Insurance against liability for damage was set out in two articles of the ZOP. The Article 5, para. 1, item, 2 of the ZOP stipulates that the valid insurance contract shall be concluded in accordance with the Article 13 of the ZOP. The wording meant that the applicant should legitimize himself in the process of registration into the Register with a copy of a valid insurance contract that has been concluded in accordance with the mentioned Article. Such agreement allowed the applicant to prove to the Ministry of Commerce that he had met the relevant registration requirement and allow him to obtain the status of an agent. The second Article that commented on insurance is the Article 13 of the ZOP. The Art. 13 of the ZOP provided that the agent was obliged to maintain a valid insurance contract with an insurance company headquartered in the territory of the Republic of Serbia, on liability insurance against damage that could be incurred to the principal due to non-fulfillment of

⁴⁴ <https://www.nbs.rs/sr/finansijse-institucije/osiguranje> – assessed on 27.7. 2022.

⁴⁵ Rulebook on Register of Agents in Real Property Sales and Lease - Rulebook no. 1, *Official Gazette of the RS*, nos. 75/2014, 88/2018 and 105/2020

⁴⁶ Official Explanation of the Draft Law on Real Property Agency and Lease, Subheading – Explanation of Basic Legal Institutes and Individual Solutions, otvorenavlada.rs/pz-nepokretnosti084-lat-doc-2, art. 13, pp. 11

⁴⁷ Leasing, Subheading - Explanation of Basic Legal Institutes and Individual Solutions, opengovernment.rs/pz-nepokretnosti084-lat-doc-2, Article 13, page 11.

contractual obligations under the Article 15 of the ZOP, as well as the obligations under the Article 16 of the ZOP. The Article 13, para. 2 of the ZOP stipulated that the minimum amount for the damage that the agent could cause to the ordering party by carrying out his agency activity amounted to a minimum of 15,000 euros in dinar equivalent any one occurrence, that is a total of at least 45,000 euros in dinar equivalent for all claims in one year of insurance. It seems that the mentioned wordings of the Article 13 determine the content of the insurance contract without which such a contract would not be legally valid. By insight into positive laws from the immediate environment, which regulate the matter of agency in real property transactions, it can be concluded that the mandatory insurance of agents is regulated and ensures that the agent regularly renews his insurance contract.

5. Almost a decade before the adoption of the Law on Agency in Real Property Sales and Lease, the mandatory insurance of agents in the Republic of Slovenia was regulated by law. The Law on Real Property Agency in Slovenia provided for mandatory insurance as follows: before starting an agency activity in property brokerage, the agent must possess an insurance cover and all time during the execution of the real property agency, the agent must be insured against liability for damages that could be caused to the ordering party or any third party due to the violation of the contract of agency on the territory of the Republic of Slovenia.⁴⁸ The Slovenian ZNP stipulated that the agent was obliged to be insured for the entire period of the agency in real property transactions as well as regularly renew the insurance contract.

6. The Croatian Law on Real Property Agency is characterized by the following norm: a real property sales agent (hereinafter referred to as an agent) is obliged to insure and renew liability insurance cover with an insurer in the Republic of Croatia against any damage that could be inflicted upon an ordering party or any third parties by performing the agency activity.⁴⁹ The ZOPHr stipulates the duty of the agent to take out and renew an insurance coverage against liability for damages inflicted to the ordering or a third party out of the agency activity. ZOPHr was adopted almost seven years before the ZOP.

7. Mandatory insurance is provided for in the Law on Real Property Agency of the Republic Srpska.⁵⁰ According to ZOPRS, the agent is obliged to take out an insurance coverage against damage that could be caused to the client or third parties by performing the agency activity, with an insurance company based in the Republic of Bosnia and Herzegovina.⁵¹ The mediator is obliged to have a valid insurance policy

⁴⁸ Law on Real Estate Brokerage – ZNPosr, *Official Gazette of the RS*, no. 42/2003, 21/2006 – Decision of the US, 47/2006, 50/2006 – other laws, 72/2006 - official revised text, 49/2011 and 47/2019, Article 6 paragraph 1

⁴⁹ Law on Real Estate Brokerage – ZOPHr, *Official Gazette of the Republic of Croatia*, No. 107/2007, 144/2012, 14/2014 and 32/2019, Art. 5 paragraph 1

⁵⁰ Law on Real Estate Mediation – ZOPRS, *Official Gazette of the Republic of Srpska*, No. 99/2020, Article 6

⁵¹ ZOPRS, Article 6 paragraph 1

during the performance of agency activities in real property transactions.⁵² Given that the ZOPRS was adopted after the Serbian Law on Agency in Real Property Sales and Lease, two obligations of agents should be pointed out. According to the first legal obligation, the agent must hold an insurance coverage and according to the second legal obligation, the agent must maintain an insurance policy for the entire time of performing the activity of agency in real property transactions.

8. The Federation of Bosnia and Herzegovina passed the Law on Agency in Real Property Sales. The Law stipulates that the agent is obliged to obtain and renew liability insurance with an insurance company in BiH, against a damage that could be caused to the ordering or a third party by performing the agency activity. It ensues⁵³ from the ZOPBiH that the agent is obliged to be insured and to renew the mandatory liability insurance.

9. The previous four laws on the subject of agency in real property transactions indicate a tendency to regulate the mandatory insurance of agents in accordance with the insurance law. First of all, from the aforementioned four laws, it ensues that mandatory norms of all of them stipulate that the agent must be explicitly insured. In the provisions on mandatory insurance, the Slovenian ZNPosr and ZOPRS emphasize the obligation of agents to get insurance cover for the entire period of performing the agency in real property transactions. With this regard, the other two laws foresee the obligation for the agent to renew the mandatory insurance.

10. So far, we have talked about the entrepreneur and the company as agents. Those subjects became the topic of theoretical explanation in the law of mandatory insurance.⁵⁴ The starting point was the observation that several laws were passed under which mandatory insurance was introduced and that the laws deemed the addressees of mandatory insurance as entrepreneurs and legal entities and/or companies (hereunder). The explanation specified the following: if an entrepreneur is the addressee of mandatory insurance under the law, it should be concluded that it is about professional liability insurance and if a legal entity is the addressee of mandatory insurance under the law, it should be concluded that it is insurance against professional liability. Such theoretical explanation was presented before the adoption of the ZOP, but it could be applied to the addressees of mandatory insurance in the ZOP, that is, to entrepreneurs and companies as legal entities.

11. Under its imperative norms, the ZOP prescribed that an agent was obliged to keep records of his business and/or regulated the exact specification of their contents. The Special Terms and Conditions for Liability Insurance of Real Property

⁵² ZOPRS, art. 6 para. 4

⁵³ Law on Real Property Transactions – ZOPBiH, *Official Gazette of the Federation of BiH*, no. 75/2021, Art. 5 para. 1

⁵⁴ Prof. dr Slobodan Jovanović: "Institutional regulation of insurance of service providers in the European Union and the Republic of Serbia", *Proceedings of the Association for Insurance Law of Serbia*, 2012, 257

Sales and Lease Agents of Dunav Insurance Company ado (Special Terms and Conditions) were creatively derived from these legal norms. The Special Terms and Conditions provided for the mandatory control of the Records on agency activity of the insured - the agent.⁵⁵ According to the Art.11 para 1 of the Special Terms and Conditions, the insured shall submit to the Insurer, when concluding the insurance contract, the Agency Records for all valid agency contracts. According to the Article 11 para 2 of the Special Terms and Conditions, during the period of insurance, the Insured shall submit to the Insurer monthly updated Agency Records, which he keeps in accordance with the Law on Agency in Real Property Sales and Lease. This can better be understood if it is taken into account that before the adoption of the ZOP, the agency agreement was consensual, that is, its existence could have been proved by a conclusive action.⁵⁶ With the entry into force of the ZOP, that contract became formal and the time of consensus of agency contracts in the Republic of Serbia was behind us. Therefore, under the Special Terms and Conditions, Dunav Insurance Company required the agent, the Insured, to allow an insight into the previous and current agency transactions in real property sales and lease. Such an approach to insurance of agents should certainly be praised.

Conclusions

1) By adopting the Law on Agency in Real Property Sales and Lease, order was introduced in the area of agency in the real property sales and lease, in accordance with the European standards, which contributes to the development of the real property market in the Republic of Serbia. For the first time in the Republic of Serbia, the law constituted an agent as an activity and thus the quality of agency services was upgraded, both for buyers and sellers of real property, regardless of whether it was an individual or an entity. By publishing the Register of Agents on the website of the Ministry of Trade, support was provided to legal business, suppression of the gray economy and strengthening of competition in the area of agency in real property sales and lease.

2) By prescribing mandatory insurance against liability for damage that could be inflicted upon an ordering party in the performance of the agency contract, the legislator in the Republic of Serbia has significantly improved legal certainty in the sale and lease of real property.

3) It is proposed to amend the Article 13, para 1 of the Law on Agency in Real Property Sales and Lease. One of the ways to amend the Article 13 para 1 of the

⁵⁵ Requirements for professional liability insurance of agents in real property sales and lease – Special conditions, *Official Gazette of Dunav insurance company ado*, *Official Gazette* 19/15 of 7. 4. 2015, Art. 11

⁵⁶ Prof. Ivica Jankovec, PhD: *Commercial Law*, 1981, 377

ZOP could read that the mediator must hold a mandatory insurance policy against liability for damage inflicted upon the ordering or a third party, arising out of the performance of the agency contract, for the entire period of agency in real property sales or lease and that he must renew such coverage regularly. As before, in the Article 13 para 2 of the ZOP, the minimum sums insured any one occurrence and the minimum sum insured per all claims in one year of insurance would be expressed.

Literature

- Čurković, M., *Insurance against non-contractual and contractual (professional) liability*, Zagreb, February 2015, 249
- Hiber, D., "The pre-contract secured by a down payment in the real property transactions contract in Serbian law", *Annals of the Faculty of Law in Belgrade*, No. 3/2018, 58
- Ivanjko, Š., "Insurance agents in law of Republic of Slovenia, Croatia and the Federation of Bosnia and Herzegovina", *Insurance* No. 5/2005, 84
- Jankovec, I., *Commercial law*, 1981, 377
- Jerković, S., "Conclusion of contract on the real property transactions through an agency", *Pravni život* No. 9 - 10/1993, 935
- Jovanović, S., "Institutional regulation of insurance of service providers in the European Union and the Republic of Serbia", *Proceedings of the Association for Insurance Law of Serbia*, 2012, 257
- Ministry of Trade, Tourism and Telecommunications: "Register in electronic form", www.mtt.gov.rs
- Orlić, M., "Zakup", in *the Commentary on the Law on Contracts and Torts* (editor in chief Prof S. Perović, PhD), 1995, 1034
- Rulebook on the professional exam for agents in real property sales and lease with the Program for taking the professional exam for performing the work of agents in real property sales and lease, *Official Gazette of RS*, Nos. 75/2014, 39/2017, 78/2018 and 98/2020
- Rulebook on the Register of Agents in Real Property Sales and Lease, *Official Gazette of the RS*, Nos. 75/2014, 88/2018 and 105/2020
- Rulebook on records on agency in real property sales and lease, *Official Gazette of the RS*, No. 75/2014
- Department for Supervision of Insurance Activities of the National Bank of Serbia, "Obavezna osiguranja u Republici Srbiji", Belgrade, June 2021,7, <https://www.nbs.rs/sr/finansijske-institucije/osiguranje>
- The sentence from the judgment of the Supreme Court of Cassation Rev. 1137/2020 of October 22, 2020, established at the Civil Department session of December 7, 2021, <https://www.vk.sud.rs/sr-lat/rev-11372020-31233>

- Official Explications of the Draft Law on Real Property Sales and Lease, *otvorenavlada.rs/pz-nepokretnosti084-lat-doc-2*, article 13, page 11
- Terms and Conditions for Professional Liability Insurance of Agents in Real Property Sales and Lease of Dunav Insurance Company ado, *Company Bulletin, Sl. 19/15 of 04/07/2015*
- Constitution of the Republic of Serbia, *Official Gazette of the RS*, nos. 98/2006, 115/2021 and 16/2022.
- Velimirović, M., "Agreement on Agency" in the *Encyclopedia of Property Law and Collective Labor Law*, 1978, 560
- Vukotić, Đ., "Provision of legal services in real property market", *Pravni život* No. 9 - 10/1993, 926
- Law on Agency in Real Property Sales and Lease, *Official Gazette of the RS*, nos. 95/2013, 41/2018 and 91/2019
- Law on Prevention of Money Laundering and Financing of Terrorism, *Official Gazette of the RS*, nos. 113/2017, 91/2019 and 153/2020
- Law on Real Property Transactions, *Official Gazette of the RS*, nos. 93/2014, 121/2014 and 6/2015
- Law on Real Property Appraisers, *Official Gazette of the RS*, nos. 108/2016 and 113/2017 – as amended
- Law on General Administrative Procedure, *Official Gazette of the RS*, nos. 18/2016 and 95/2018 – Authentic interpretation
- Law on Real Property Agency, *Official Gazette of the RS*, nos. 42/2003, 21/2006-Decision of the CC, 47/2006, 50/2006 – as amended, 72/2006 – official revised text, 49/2011 and 47/2019
- Law on Real Property Agency, *Official Gazette*, nos. 107/2007, 144/2012, 14/2014 and 32/2019
- Law on Real Property Agency of the Republic Srpska, *Official Gazette of the Republic Srpska*, No. 99/2020
- Law on Agency in Real Property Transactions, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 75/2021

Translated by: **Bojana Papović, Grad. Philol.**