

Law Bulletin

Real Estate | Turkey | July 2019

SIGNIFICANT AMENDMENTS TO REAL ESTATE LEGISLATION

The Law on the Amendments to the Land Registry Law and Certain Laws (the “**Omnibus Bill**”) published in the Official Gazette dated 10 July 2019 and numbered 30827 introduced significant amendments to several laws, particularly to the Land Registry Law, the Condominium Law, the Zoning Law and the Law on Restructuring the Areas Under Risk of Natural Disasters. The enforcement date of a number of the provisions is 10 July 2019, which is the publication date in the Official Gazette, whereas the enforcement date of the remaining provisions is 1 January 2020. We will only refer to the significant amendments made to the Land Registry Law, the Condominium Law, the Zoning Law and the Law on Restructuring of Areas Under Risk of Natural Disasters below.

1. Amendments Regarding Land Registry Practices

The following amendments are introduced by the Omnibus Bill for the purpose of eliminating bureaucracy and paperwork, expediting the land registry transaction processes of the Turkish citizens residing in Turkey or abroad and keeping the land registry records in an organized way:

- As per the new provision introduced to the Land Registry Law, as of 1 January 2020, the parties will be able to transfer the ownership of a real property by being present at the different land registry offices in Turkey and abroad, without being obliged to be present at the same land registry office and sign the same official deed.
- Through another new provision introduced to the Land Registry Law, a new practice is adopted for the correction of errors in the land records regarding joint ownership shares, arising from the cadaster or land registry transactions. According to the amendment, the relevant land registry office notifies the joint owners and third party right holders (either in the nature of right in rem or personal right) who are negatively affected from such error, of the error’s reason and the shares’ status in the land registry records after the correction,

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in order to obtain their approvals for such correction. If the right holders do not give their approvals within thirty days following the notification date, the land registry office makes the correction ex officio and notifies the right holders of their right to file a lawsuit against such correction before the Civil Court of First Instance within sixty days following the notification date.

- As per the amendments made both to the Turkish Civil Code and the Land Registry Law, a new procedure is adopted for the release of fixed term mortgages which have expired. Within this context, as of 1 January 2020, the fixed term mortgages may be released by the land registry office within thirty days following the expiry of their term, upon the owner's request, provided that no annotation is registered on the real property for the foreclosure of mortgage. For the fixed term mortgages which have expired but are not released before 1 January 2020, the above mentioned thirty-days term will commence on 1 January 2020.
- The amendment made to the Land Registry Law revokes the requirement of affixing a photo of the parties to the official deed.
- The amendment made to the Condominium Law simplifies the procedure for correcting the errors made in respect of block and independent unit numbers. **(i)** For the block numbers, a decision adopted by the simple majority of the board of condominium owners and **(ii)** for the independent unit numbers, the approvals of the relevant real property's right holders (in the nature of right in rem or personal right) are deemed sufficient to correct the errors in the architectural projects of the condominium, without the need for a decision adopted by all or the majority of the condominium owners.

2. Amendments Made to the Zoning Law

The Omnibus Bill made several amendments to the Zoning Law to eliminate the difficulties that are experienced in practice. The significant amendments are as follows:

- The zoning procedure, known as the public readjustment share (the "**PRS**") is amended for the purpose of transferring to the public, the areas that are allocated as common service areas in the implementation zoning plans or the areas that must be expropriated, and eliminating the difficulties arising from expropriation, and confiscating without expropriation. As per the amendment made to article 13 of the Zoning Law, the areas allocated as common service areas must initially undergo parceling procedure as per article 18 of the Zoning Law, regulating the development re-adjustment share (the "**DRS**"); and then, these areas must be transferred to the public by way of expropriation to be conducted by the relevant public authority within the scope of Expropriation Law, through (i) exchange of these areas with the real properties under the ownership of Treasury or other relevant administrations, or (ii) purchase of these areas, respectively. It is expected that the further details on the transfer to the public, the areas that are allocated as

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common service areas and the areas subject to expropriation, through DRS implication will be set out by a regulation in the following days. The amendment mentioned in this paragraph is interpreted as the abolishment of PRS.

- The DRS deduction rate was increased from 40% to 45%. The DRS rate cannot exceed 45% of the total surface area of the lands and plots before the DRS implication. Additionally, while the multiple implications of DRS to the same parcel was prohibited previously, the new provisions allow additional DRS deductions from the same parcel, due to the reasons such as increase in population, until the DRS deduction rate reaches to 45%. In line with this new rule, additional DRS deductions can be made from the parcels until the DRS rate reaches 45%, if parts of such parcels are voluntarily donated to the public as a result of amalgamation (tevhid) and division (ifraz) transactions, instead of a DRS implication.
- Transactions and procedures, which are being carried out in line with DRS and PRS rates calculated as per the parceling plans, will continue until 10 June 2021, provided that such parceling plans are approved by the relevant administration but not registered before 10 July 2019.
- If it is not possible to make a DRS deduction from the parcels, due to the existing buildings, a monetary amount can be collected from the parcel owner, instead of the DRS deduction. A licensed real estate appraiser or the appraisal commission of the relevant authority will appraise such amount. The appraised value will be indicated in the declarations section of the land registry records and will be increased at the readjustment rate, annually. Additionally, unless this amount is paid in full, the relevant parcel cannot be transferred to third parties and the building operation license cannot be issued for these real properties. If the amount is paid in full, the relevant declaration will be released from the records upon request of the real property's owner or the relevant authority.
- The amalgamation and division of lands can only be made in the zoned areas with a zoning plan provided that the parceling plans are enacted and registered in accordance with the zoning implementation plans. However, as an exception to this rule, amalgamation and division of lands can be conducted in the following areas lacking a zoning plan: **(i)** the public investments subject to the authority of the public bodies specified as the central administrations in the Law on Public Finance Management and Control or the areas under the public ownership, **(ii)** the residential areas where the parceling plan cannot be implemented, **(iii)** the areas subject to a preservation plan and **(iv)** the remaining parts of the land blocks, majority of which are formed in accordance with the applicable zoning implementation plan.
- The relevant administration can carry out amalgamation or division processes on the zoning parcels which are not suitable for development; if the land owners cannot reach an

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agreement regarding amalgamation or division of such parcels within three months following the date of the relevant administration's notification.

- In principal, when a parcel undergoes a DRS implication as per the parceling plans, upon deduction of the DRS rate, a real property located in the implication area will be allocated to the owner. However, if it is not possible to provide the owner with a real property in the same area, a real property in the closest area which is an equivalent of the one that has undergone DRS implication, will be allocated to the owner.
- The relevant administration can re-arrange the lands and plots, that are subject to joint ownership and located in the implementation areas, as separate real properties, provided that all the conditions are met.

3. Amendments to Urban Transformation Implementations

As mentioned in the Omnibus Bill's justification, the amendments made to the Law on Restructuring the Areas Under Risk of Natural Disasters aim to accelerate the transformation of the areas that constitute a risk for the safety of life and property and to solve the problems faced during the transformation implementations. The significant amendments made to the Law on Restructuring the Areas Under Risk of Natural Disasters are as follows:

- Within the scope of urban transformation, the independent units owned by the building contractor can only be sold in accordance with the construction's progression level and upon the relevant municipality's approval. The relevant municipality will determine the construction's progression level and notify the relevant land registry office of the contractor's independent units which can be sold to third parties (at a rate 10% below the determined progression level). The contractor must obtain all owners' approvals to sell its independent units at or above the construction's progression rate.
- If the real properties subject to transformation implementations in the areas under the risk of natural disasters are transferred to the building contractor, who has undertaken the construction work pursuant to a real property promise to sell agreement or construction agreement in return for land share; no seizure or injunctions can be registered on these real properties due to the contractor's debts towards third parties – except for the equipment and labor receivables related to the construction – until the construction servitude is established on these real properties on behalf of the owners. If the construction servitude cannot be established within six months following the construction's commencement date, seizures or injunctions can be registered on these real properties.
- To protect the creditors, certain amendments have been introduced with respect to the encumbrances in the land registry records. With regard to the real properties that were transformed to land by demolition of the erected constructions, all rights in rem, personal rights and all kinds of annotations in the land registry records, that restrict or

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prohibit the transfer of such real property, will continue to be valid over the owner's shares. However, rights and annotations referred to above will not impede transactions to be conducted within the scope of the transformation implementations (amalgamation, division, area correction, allocation, formation, cession, registration, establishment of construction servitude and condominium) before the land registry, and owner's and related parties' approval will not be required in connection with these transactions. For the new constructions to be erected, these rights and annotations will continue to exist only on the independent units belonging to the owner who is liable for these rights and annotations, during the phase of construction servitude and condominium establishment.

- The Ministry of Environment and Urbanization, TOKI or the relevant municipality may conduct land use conversion, amalgamation , division , area correction, allocation, formation, cession and registration transactions ex officio.
- The Ministry of Environment and Urbanization may conduct the transformation implementations in the areas where the constructions **(i)** are under the risk of demolition or **(ii)** are demolished by themselves or **(iii)** are, or are under the risk of being heavily damaged due to reasons such as ground subsidence, landslide, flood, rock fall, fire or explosion, ex officio, without obtaining the owners' and other related parties' approval.

This bulletin covers only some of the amendments that are introduced by the Omnibus Bill. You may always contact us if you need further information regarding the amendments.

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