

## **LAW ON THE CESSATION OF THE APPLICATION OF THE LAW ON TEMPORARY ABANDONED REAL PROPERTY OWNED BY CITIZENS**

(Official Gazette of the Federation BiH, Nos. 11/98, 29/98, 27/99, 43/99, 37/01, with incorporated amendments proclaimed by the High Representative Decision of the 4 December 2001 (in underlined text below) and published in the Official Gazette of the Federation BiH, No. 56/01 of the 21 December 2001)

### **I. GENERAL PROVISIONS**

#### **Article 1**

From the day of the entry into force of this law, the *Law on Temporary Abandoned Real Property Owned by Citizens* (Official Gazette RBiH 11/93, 13/94 - hereinafter: the Law) and regulations regulating the issue of temporary abandoned property owned by citizens in the period between 30 April 1991 and the entry into force of this law, shall cease to applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation).

#### **Article 2**

From the day of the entry into force of this Law, the bodies and authorities of the Federation and other bodies in the Federation (hereinafter: the competent authorities) shall refrain from undertaking any new actions by which real property owned by citizens is declared abandoned or placed under municipal administration.

The competent authorities referred to in Paragraph 1 of this Article shall decide about the rights of owners to repossess their real property which has been declared temporarily or permanently abandoned and the rights of temporary occupants of the abandoned real property.

#### **Article 3**

Real property declared abandoned and placed under municipal administration on the basis of the *Law on Temporary Abandoned Real Property Owned by Citizens* shall remain under municipal administration until the return of the real property to the owner pursuant to the provisions of this Law.

#### **Article 4**

Owner of the real property declared abandoned shall have the right to file a claim for the return of the real property at any time.

Exceptionally, claims for repossession of real property may also be made by persons who were in unconditional possession of the real property at the time it was declared abandoned.

#### **Article 5**

For the purpose of this Law, the owner shall be understood to mean a person who, according to the legislation in force, was the owner of the real property at the moment when that property was declared abandoned.

The owner of the real property may authorize another person to submit the claim for the return of the real property.

## **Article 6**

The user to whom the real property has been allocated for temporary use on the basis of the *Law on Temporary Abandoned Real Property Owned by Citizens* (hereinafter: the temporary user), shall continue to use the real property under the conditions and in the manner which were prescribed by the *Law on Temporary Abandoned Real Property Owned by Citizens*, until the issuance of a decision under Article 12 of this Law.

## **Article 7**

A temporary user who has been ordered to vacate the property pursuant to the provisions of this Law and who is entitled to alternative accommodation pursuant to this Law, shall be provided with accommodation within the same canton by the competent service of the municipality on the territory of which s/he enjoyed the latest residence within the deadline set by the decision under Article 12 of this Law for his/her vacation of the property. The temporary user shall be obliged to move out of the property within the deadline set in Article 12 of this Law.

In case that the administrative authority of the territory of which the temporary user has his/her latest residence is unable to provide alternative accommodation, other competent bodies including other municipal organs, state-owned companies or firms, and cantonal and Federation authorities shall be obliged to make available facilities which are at their disposal for the purposes of providing alternative accommodation under this Law.

As an exception, if the temporary user's 30 April 1991 house or apartment is uninhabitable or occupied, on the written request of the temporary user and pending the reconstruction or vacation of the 30 April 1991 house or apartment, the authority responsible for providing temporary accommodation shall be the competent authority responsible for housing affairs in the municipality where the 30 April 1991 house or apartment is located.

The authorities responsible to provide alternative accommodation shall not be obliged to provide alternative accommodation to persons occupying the property without a valid legal title and shall be obliged to evict such persons, ex officio, immediately or at the latest within 15 days.

In all cases in which the current occupant remains in the property, all moveable property of the owner found in the property must be returned to him/her upon his/her request.

In no event shall the failure of the municipality to meet its obligations under Paragraph 1 of this Article operate to delay the ability of the owner to reclaim his property.

## **Article 8**

For the purposes of this Law, the standard of alternative accommodation provided shall be one or more rooms which provide shelter to the user from adverse weather conditions and protects his or her furniture from damage, with a minimum of 5 square meters/person. Such accommodation may be in the form of business facilities or a co-tenancy.

## **Article 9**

Parties in proceedings instituted at the owner's request for repossession of the real property shall be the owner of the real property and the temporary occupant at the time the request was submitted.

## **II. RETURN OF REAL PROPERTY TO THE OWNER**

### **Article 10**

The owner of private property has the right to claim at any time from the competent authorities the repossession of his/her property that has been declared abandoned or allocated for temporary use.

### **Article 11**

A claim for repossession of a property under Article 10 of this Law shall be filed by the owner to the competent municipal, city or cantonal administrative body competent for property - law affairs.

The claim shall be submitted in writing, signed by the owner or orally, in person by the owner or an authorized representative. A claim should include:

1. all necessary information on the property;
2. any evidence in possession of the claimant that the claimant is the owner;
3. the date when the owner intends to reoccupy the property.

The claim for repossession of property referred to in Paragraph 1 of this Article shall not be subject to the statute of limitations.

### **Article 12**

Upon the receipt of the owner's claim for the return of the property, the competent body shall issue a decision on the return of the property to the owner within a period of 30 days from the date of the receipt of the claim. The claim shall be solved in the chronological order in which it was received, unless specified otherwise in law.

The decision referred to in paragraph 1 of this Article by which the owner's claim is accepted shall contain:

1. a decision terminating the municipal administration of the property as of the date of the intended return;
2. a decision on repossession of the property by the owner;
3. a decision terminating the right of the temporary user;
4. a time limit for vacating the property by the temporary user or the person using the property without a valid legal title, or the time limit for returning the land;
5. a decision whether the temporary user is entitled to alternative accommodation in accordance with this Law;

6. an explicit warning that the current user will be subject to prosecution under the Criminal Code if s/he removes objects from, or otherwise damages, the property; and;
7. an explicit warning to a current user who is a multiple occupant that s/he is subject to the fines set out in Article 17c, Paragraph 3 of this Law.

### **Article 12a**

The deadline for vacating the property, referred to in Article 12, Paragraph 2, Point 4 of this Law shall be 15 days from the date of delivery of the decision and the decision on entitlement to accommodation under Article 12, Paragraph 2, Point 5 of this Law shall be negative, unless the current user is a temporary user as defined in Article 6 of this Law and:

1. The temporary user is not a multiple occupant, as defined in Articles 16 and 16a of this Law; and:
2. The temporary user left his/her apartment or residential private property in the territory of Bosnia & Herzegovina between 30 April 1991 and 4 April 1998; and:
  - (a) In the case that the apartment or residential private property s/he left is occupied, s/he or a member of his/her 1991 family household has applied to the competent administrative authority, court or the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter, CRPC) for repossession of that apartment within all deadlines prescribed by law, or for repossession of that residential private property within 60 days of this provision coming into force and is awaiting a decision on that claim; or;
  - (b) In the case that a decision on a claim for repossession or CRPC certificate has been issued with respect to the apartment or residential private property s/he left, s/he or a member of his/her 1991 family household has requested enforcement of that decision or CRPC certificate within 60 days of this provision coming into force or within 60 days of being legally entitled to seek enforcement, whichever is later; or
  - (c) In the case that the apartment or residential private property s/he left is damaged or destroyed, s/he or a member of his/her 1991 family household has applied for return and reconstruction or is awaiting reconstruction assistance.

In case the current user fulfills the criteria set out in Paragraph 1 of this Article, the deadline for vacating the apartment shall be not more than 90 days from the date of the delivery of the decision. If a temporary user ceases to fulfill the conditions in this paragraph and a decision setting out a 90-day deadline to vacate has already been issued, the competent authority *ex officio* shall immediately issue a new decision specifying a deadline to vacate 15 days from the date of its delivery and then a conclusion on enforcement.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended to up to one year if the municipality responsible for providing alternative accommodation in accordance with Article 7, Paragraph 1 of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the Federation Ministry of Urban Planning and Environment, and upon a finding by the Ministry, that there exists a documented absence of available housing in the municipality, which shall be agreed upon by the Office of the High Representative.

The current user shall be required to demonstrate that s/he meets the conditions for entitlement to alternative accommodation under this Law; including providing claim or decision numbers for the repossession of the current user's 1991 home. If the current user cannot demonstrate that s/he meets these conditions, the competent authority shall proceed in accordance with the *Law on Administrative Procedures* (Official Gazette of FBiH, No. 2/98) in order to determine relevant facts.

In case of the return of arable land, the time limit referred to in Article 12, Paragraph 2, Point 4 of this Law may be extended until the harvest is completed.

### **Article 13**

The competent authority must notify the owner of the property and the temporary user of the property.

Any appeal against the decision must be submitted to the cantonal administrative body competent for the property law affairs within 15 days from the date of receipt of the decision.

An appeal shall not suspend the execution of the decision. In the event of an appeal, the competent authority shall retain copies of documents or take any other steps as necessary to ensure that the decision can be executed, notwithstanding the initiation of an appeal. If an appeal against a positive decision is not determined within the time period specified in the *Law on Administrative Procedures*, the decision of the first instance body, and therefore the claimant's legal right to the real property, shall be deemed to be confirmed.

In case the cantonal ministry competent for housing affairs annuls the first instance decision, the annulment shall be considered partial under Article 236, paragraph 3 of the *Law on Administrative Procedures*, in the sense that the annulment shall be related only to the decision on the rights of the current occupant unless there are grounds to annul the decision on the right of the claimant. If the competent authority again confirms the property right of the claimant, the deadline set for vacating the property pursuant to Article 12, paragraph 2, point 4 of this Law shall run from the date of delivery of the original decision that was partially annulled.

### **Article 14**

A party affected by a decision made under Article 12 may at any time file a claim to the CRPC.

In the event that a proceeding from Paragraph 1 of this Article is initiated, all other proceedings before the competent authorities, including the enforcement of decision referred to in Article 12 of this Law, shall be stayed pending the final decision of the CRPC, but only in cases where the responsible body has rejected the request of the claimant on formal or material grounds, and where suspension has been requested by the CRPC.

A decision of the CRPC is final and binding.

Regarding the rights and obligations of a party referred to in Paragraph 1 of this Article, the decision of the CRPC shall have the same legal force as a decision of any other competent authority made in accordance with this Law.

## Article 15

The return of the property to the owner shall be witnessed by an official of the competent office of the municipality referred to in Article 11, paragraph 1 of this Law.

The return of the property and the entering into possession by the owner shall be recorded in the minutes including, among other things, a detailed description of the current state of the premises and the movable property therein.

If minutes are unavailable from the time when the property was abandoned, the competent authority shall conduct an inspection of the property at the time the decision is made pursuant to Article 12 of this Law. The authorities *are obliged*, pursuant to their duties under the Criminal Code, to seek the prosecution of a current user who illegally removes property or fixtures from the property, or who willfully causes damage to the property, when s/he vacates the property either voluntarily or by eviction. The competent authority shall include a notice or warning to a current user about the aforesaid criminal sanctions for such action pursuant to Article 12, paragraph 2, point 6 of this Law.

The competent authority shall record such information in the minutes, and distribute the information recorded therein, as well as other information regarding repossessed or vacant and sealed property, as is defined by instruction of the Federation Ministry of Urban Planning and Environment. Information distributed and received in this manner is to be stored, processed, distributed and used only in a manner consistent with and necessary to the purpose of promoting property law implementation in accordance with the General Framework Agreement for Peace.

## Article 16

If the person occupying the property fails to voluntarily comply with the decision ordering him/her to vacate the property, the competent authority shall employ compulsory enforcement, in accordance with the law.

The enforcement shall be carried out at the request of the owner.

Exceptionally, the competent administrative body shall, ex officio, or upon the request of a person who has a legal interest in the procedure, pass a decision to vacate the real property immediately in cases where the current user is a multiple occupant. The affected person has the right to file an appeal against the decision, but the appeal does not suspend the eviction.

A multiple occupant includes, among others, a current user who uses a real property and who:

1. holds an occupancy right to or is using more than one apartment; or
2. has a house or is using an apartment in cases where the house or apartment is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions (protection against weather; access to water and electricity; a heating source; basic privacy; and security of belongings); or
3. is in possession of the house or apartment in which s/he lived on 30 April 1991 (hereinafter "1991 home"); or where a member of his/her family household is in possession of his/her 1991 home; in cases where his/her 1991 home is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions; or

4. has already been provided with alternative accommodation by a responsible body; or
5. has a member of his/her family household who has accommodation anywhere on the territory of the Federation of Bosnia and Herzegovina or in the same city or municipality as the 1991 home anywhere else in the territory of Bosnia and Herzegovina; or
6. has a legal right to return into possession of his/her 1991 home; and his/her 1991 home is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions, as explained in this paragraph; and it is possible for him/her to return into possession of his/her 1991 home; or
7. whose accommodation needs are otherwise met, as defined in Article 16a of this Law.

The minimum standard for alternative accommodation set out in Article 8 of this Law shall apply only to Points 3, 4, and 6 of Paragraph 4 of this Article.

In cases where a claim has been filed under this Law for a real property which is vacated by a multiple occupant, and no decision has been issued at the date of vacation, the competent body shall immediately issue a decision on the claim.

For the purposes of this Article, "family household" shall mean all members of the family household as of 30 April 1991; or, if they were not members of the family household as of 30 April 1991, any spouse, parents, children; or other persons registered together with a temporary user.

#### **Article 16a**

A temporary user whose accommodation needs are otherwise met shall include, among others:

1. a temporary user who voluntarily sold the real property in which s/he lived on 30 April 1991; or
2. a temporary user who voluntarily exchanged the real property or apartment in which s/he lived on 30 April 1991 and who is in possession of the apartment or real property or has transferred it to a third party; or
3. a temporary user who refuses alternative accommodation offered in writing by the competent authority, or refuses assistance in the reconstruction of his/her residence of 30 April 1991. The competent authority shall inform the temporary user of the consequence of refusing alternative accommodation or reconstruction assistance; or
4. a temporary user who resides in the same municipality as s/he did in 1991, unless s/he can provide evidence as to why he or she cannot return to his or her 1991 home; or
5. a temporary user who was a sub-tenant in 1991; or
6. a temporary user who has sufficient disposable income, including assets, to provide for his/her own accommodation. Sufficient disposable income shall be defined as one-fourth of the applicable breadbasket, as calculated by the competent statistical institute, per current family household member, plus 200 KM; or

7. a temporary user, in a case where the owner provides him/her with a different accommodation as a tenant within the same canton, unless the temporary user agrees in writing to another municipality elsewhere, for at least six months. The standard of accommodation shall be that set out in Article 8 of this Law; or
8. a temporary user who left his/her apartment or residential private property in the territory of Bosnia & Herzegovina between 30 April 1991 and 4 April 1998 and there was a claim for repossession of that apartment or residential private property filed, if the claim for repossession is subsequently withdrawn; or
9. a temporary user who has been allocated any state-owned, including formerly socially-owned, land since 6 April 1992, more than 150 days from the date the allocation issued pursuant to a waiver granted by the Office of the High Representative, unless s/he cancels the allocation within 60 days of the date of the confirmation or of the date this provision comes into force, whichever date is the later; or
10. a temporary user who, unless a waiver application is pending before the Office of the High Representative, has been allocated any state-owned, including formerly socially-owned, land since 6 April 1992, unless s/he cancels the allocation within 60 days of the date this provision comes into force; or
11. a temporary user who has received housing credits, building materials, or any other form of housing construction/purchase assistance, more than 150 days from the date of receipt of the assistance or the date of receipt of the first installment of the assistance, unless s/he cancels the assistance within 60 days of receipt of the assistance, or the first installment of the assistance, or within 60 days of the date this provision comes into force, whichever date is the later.

For the purposes of Points 9 to 11 of Paragraph 1 of this Article, the competent authority shall inform the temporary user of the consequences of not canceling the land allocation or housing construction/purchase assistance, whichever is applicable.

For the purpose of this Article, the term 'temporary user' shall include persons as defined in Article 16, Paragraph 7 of this Law.

## **Article 17**

The proceedings for the repossession of real property by the owner as determined in this law and proceedings of the compulsory enforcement referred to in Article 16 of this law shall be carried out in accordance with the *Law on Administrative Procedure*.

## **Article 17a**

The provisions of this Law shall also apply to real property owned by citizens which was not declared abandoned in accordance with the regulations referred to in Article 1 of this Law, if the owner abandoned the real property before 4 April 1998.

All binding court decisions which order the return of real property to the possession of the owner shall be enforced by the court.



Pending proceedings on the return of real property to the possession of the owner will continue, while new claims for the return of property shall be submitted to the responsible organ under Article 11 of this Law.

#### **Article 17b**

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

In case of a dispute as to the lawfulness of the transferred real property right, the competent body shall refer the matter to the competent court according to the provisions of the *Law on Administrative Procedures* regulating preliminary issues, in order to rule on the allegation. Notwithstanding the provisions of the *Law on Civil Procedures* (FBH O.G. 42/98), the burden of proof shall lie upon the party claiming to have acquired rights to the real property through the transaction to establish that the transaction was conducted voluntarily and in accordance with the law. Where one of the transferred properties is located in the territory of another republic of the former SFRY, the burden of proof shall lie upon the party claiming that the transfer of property was not conducted voluntarily and in accordance with the law to demonstrate that the status of the parties prior to the transfer of property shall be restored.

#### **Article 17c**

The competent administrative body shall be fined 1000 to 5000 KM for the following minor offences:

1. if it does not order the vacation of the real property within 15 days in accordance with Article 12, Paragraph 2, Point 4 of the Law;
2. if it fails to process an eviction request because one of the parties filed an appeal against the prior decision, as set out in Article 13, Paragraph 3 of the Law;
3. if it fails to hand over the real property in accordance with Article 15 of the Law;
4. if it is required to take action against a multiple occupant, as set out in Article 16, Paragraph 3, or if it fails to issue a decision according to Article 16, Paragraph 6 of the Law;

The responsible person in the competent administrative body shall also be fined 200 to 1000 KM for violation of Paragraph 1 of this Article.

In addition to the above, a person who is a multiple occupant as defined:

1. in Article 16, paragraph 4, Points 1, 2 or 7 of this Law and who fails to comply with the deadline to vacate specified in a decision issued pursuant to Article 12 of this Law shall be fined 500 to 5000 KM;
2. in Article 16, Paragraph 4, Points 3 to 6 of the Law and who fails to comply with the deadline to vacate specified in a decision issued pursuant to Article 12 of this Law shall be fined 250 to 1000 KM.

#### **Article 17d**

A person whose right of temporary use was terminated under Article 12, Paragraph 2, Point 3 of this Law, who spent his/her personal funds on necessary expenses for the real property, shall be entitled to recover those funds under the *Law on Obligations* (Official Gazette RBiH 2/92, 13/93 and 13/94). Proceedings under the Law on Obligations may be commenced from the date when the previous owner regains possession of the real property.

Where the court has awarded compensation to the person referred to in Paragraph 1, the owner may recover that sum from the competent authority under the *Law on Obligations*.

The competent authority shall be liable for all damage to the property from the time it was abandoned by the owner until the time it is returned to the owner or a member of his/her 1991 household pursuant to this law.

### **Article 18**

This law shall enter into force on the day following its publication in the "Official Gazette" of the Federation of Bosnia and Herzegovina.