REGISTRATION OF THE PROPERTY RIGHT IN ACCORDANCE WITH LAW NO. 231/2018

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Abstract: Property is a fundamental right guaranteed by the Constitution of Romania, being also described in article 17 of the Charter of Fundamental Rights of the European Union, according to which "Everyone has the right to own, use, dispose and leave property on who has acquired them legally", this article being an integral part of the Additional Protocol to the European Court of Human Rights: "Every natural or legal person has the right to respect his or her assets. No one can be deprived of his property except for the sake of public utility and under the conditions provided by law and the general principles of international law."

Keywords: property right, land registry, property title, legislation, urban area, constructions

1. Introduction

Law no. 231/2018 as well as the other legislative initiatives in this field: GEO 1/1998; L 54/1998; GEO 102/2001; L 545/2001; L 247/2005; L 358/2005; GEO 209/2005; L 341/2006; L 47/2007; L 340/2007; L 67/2010; L 71/2010; L 158/2010; L 71/2011; GEO 81/2011; L 76/2012; GEO 34/2013; L 165/2013; L 187/2012; L 38/2015; L 186/2017 and subsequently L 116/2019 complements and amends Law 18 of February 19, 1991, the so-called Law of the Land Fund.

This law has been eagerly awaited, by those who, for one reason or another, have failed to register their property of the land in use, especially those lands in the non-cooperative area, a problem that has not yet reached the end, despite the numerous normative acts mentioned above, implemented from 1991 to the present.

2. The reasons underlying the issuance of Law no. 231/2018

Under the fact that, regarding the reconstitution of the property right Law 18/1991 and the subsequent additions of this normative act, they are not able to solve most of the situations that appeared at both local and national level, in order to solve them, it was necessary to complete or modify certain articles, in order to adapt to the current conditions and the reality of the field.

Practically the Law 231/2018 provides that, within 120 days from the entry into force, the natural and legal persons can make requests for the constitution and / or the reconstitution of the property right regarding the area of land related to the dwelling house and the annexes

of the household, as well as the courtyard and the garden around them, which are hightlighted in the property documents, in the land book, in the agricultural register or in other land documents, at the date of entry into the agricultural production cooperative or in their absence by any means of proof, including statements authenticated by witnesses.

In the case of the land related to the house, which have not been cooperated, the owners or their heirs may request the county commission to issue the title of property, as follows: if the applicants appear in the agricultural registers or the cadastral registers and in the fiscal records, if the land is the property of the Romanian State and the requesting persons have the quality of owners of the constructions on the lands that are the subject of the present law and are not subject to the requests for reconstruction or the constitution of the right of owned by other persons.

In view of these provisions, the interested persons can submit applications to the commissions of local land funds that will establish a register in which the applications registered under Law no. 231/2018.

3. Law enforcement rules

One of the most important changes of Law 18/1991 brought by Law 231/2018 refers to Article 23, which defines the lands that can be the object of this reconstitution of the property right, through paragraphs 2 and 2¹ that will be modified in the sense in which the lands related to the constructions (the dwelling house, the annexes of the household), as well as the yard and the garden around them are those evidenced in the property documents (land book, agricultural register) or in other land documents, at the date of entry into the agricultural production cooperative or in their absence by any documents proving this. At the same time in the case of constructions alienations, the land related to them provided in paragraph (2) is the one agreed by the parties on the date of alienation, evidenced by any documents, including authentic witness statements.

Regarding the land requested by the owners, Article 24 mentions the conditions under which they can benefit from the provisions of this law, in this sense after paragraph 2 a new paragraph, 3 is introduced, which defines the fact that the land located in the urban area, related to the constructions built by the former production cooperatives, the former intercooperative economic associations and the former consumer cooperatives, will be registered in the property of the current owners, if they fulfill cumulatively the following aspects:

- a) they hold constructions from the date of acquisition until the date of requesting the registration of the property right;
- b) can prove that the building is registered in the agricultural register and that they paid the amounts related to taxes in accordance with the legal provisions;
- c) for the land subject to the request, related to the construction, the property right has not been constituted or reconstituted;
- d) these lands for which the title of the property was requested, are not in the public or private domain of the Romanian State.

Regarding the preparation of the minutes of putting in possession respectively of their completion, Article 27, introduces after paragraph 1 a new paragraph, (1¹), which stipulates that, in the situations in which when drawing up the related minutes of possession to the applicants, it is found that their name, first name or initials were incorrectly noted in the annexes validated by the commission's decision, as compared to the names and surnames of the identity documents presented, the annexes previously validated by commission decisions are not modified.

The minutes of putting in possession necessary for the issue of the titles of property will be completed with the names and surnames of the applicants according to the identity documents and will have annexed for the issue of the titles of property, evidences from which it will be shown that the applicants registered in the minutes of putting in possession are the same as those included in the annexes previously validated by decisions by the commission.

At the same time in this article, by adding paragraph 23, the cases in which the owners or their heirs can request the county commission to issue the title of property under the conditions of the present law are specified, under the following conditions:

- a) if the applicants appear in the agricultural registers or the cadastral registers and in the fiscal records;
- b) if the land is the property of the Romanian State and the requesting persons have the quality of owners of the constructions on the lands that are the object of the present law;
- c) they are not the subject of requests for the constitution or reconstitution of the property right by other persons.

4. The specific documentation necessary to obtain the Property Title

All these changes and additions brought to Law 18/1991 by Law 231/2018 presented above will be found in the file that each applicant will submit to the city hall, on the radius of which the building or buildings are, for which he will request the County Commission for Land Fund release of a Property Title. In this regard, the file will necessarily include the following documents:

a) application, made by each entitled person, personally or through an agent according to the annex below:

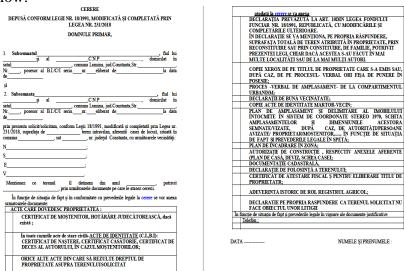


Figure 1. Model application regarding the reconstitution or constitution of the property right

In the situation where there are several heirs, the request is made jointly, being signed by each of them.

- b) copy of identity documents for all applicants;
- c) photocopies according to the documents of civil status (certificates of: birth, marriage, death of the author, in the case of the heirs, certificate of heir / quality of heir);
 - d) authentic witness statements;

e) plan for the location and delimitation of real estate drawn up by a person authorized in topographic works;

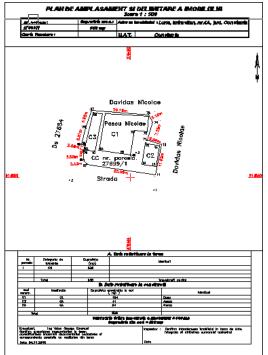


Figure 2. Topographical plan regarding the location and delimitation of the building

It is necessary that the location and delimitation plan contain all the elements characteristic of a first registration documentation in the Land Book (geometry, surface, data regarding the parcel (s) number (s), the categories of use according to the current use, the neighborhoods, the address, the dimensions, the name of the owner (s), the topographic grid, data relating to the land respectively to the constructions built on it, the topographic north, etc.) because each file will be sent for technical verification to the Cadastre and Real Estate Advertising Office within the radius of the building in question.

- f) certificate issued by the City Hall of the Territorial Administrative Unit within the radius of which the building in question is, according to the agricultural registers from 1945 December 1989 from which the surface of the land owned by the petitioner in the locality of the commune as well as the constructions registered;
- g) certificate of inheritance if the person / persons appearing in the agricultural registers or the cadastral registers and in the fiscal records are deceased;
- h) neighborhood declaration by which the neighbors of the building concerned express their agreement regarding the limit for each of the sides related to the building, this declaration being given knowing the provisions of art. 326 of the New Penal Code regarding false statements;

Figure 3. Neighborhood declaration model

i) Declaration on own responsibility stating that the requested land is not the subject of requests for the reconstitution or constitution of the property right to other persons, respectively a declaration on own responsibility stating that the requested land is not / was the subject of any cause in the role the courts and the way of settlement, as the case may be;

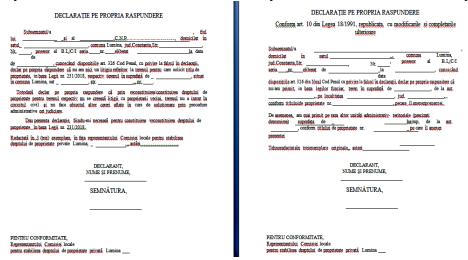


Figure 4. Statement on your own responsibility regarding the above situations

5. Conclusions

Regarding the effects of this legislative act, the opinions are divided, with different opinions on this subject. Applicants consider that, although the content of this file is voluminous in terms of the documents required to issue the title of property, this law represents a viable alternative in relation to the other ways of obtaining the right of property for the non-cooperative area, for example the way of the court where the time elapsed since the action is filed in court and its settlement is much greater.

However, even by amending or supplementing paragraphs or articles of the famous Law 18/1991, this law 231/2018 had some deficiencies with several legislative proposals regarding the modification of articles, for example article 24 (3), which does not specify the fact that the provisions of the present law also apply to the land related to the constructions built by the former organizations and entities of the consumer cooperation, regardless of their current or past name.

Probably the most important modification brought to Law 231/2018 was the entry into

force of Law no.116 / 2019 for repealing art. II of the Law no.231 / 2018 for the modification and completion of the Law of the land fund no.18 / 1991, article that established a term of 120 days in which the natural and legal persons who fulfilled the conditions provided by articles 23, 24 and 27 of the Law no. 18/1991, they could make requests for the constitution and / or reconstitution of the property right.

6. References

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