DETERMINATION OF MARITAL PROPERTY IN THE PROCEDURE OF NOTARIAL PROCESSING OF REAL ESTATE CONTRACTS IN BOSNIA AND HERZEGOVINA: SOME OPEN ISSUES

Summary: *The principle of trust in land registers is one of the most important principles of land register law in Bosnia and Herzegovina. However, in practice, certain controversial issues arise when it comes to the disposal of real estate that is registered as the property of only one of the spouses. In accordance with the current legislation and practice, the notary in the procedure of notarial processing of real estate contracts determines the legal basis for the acquisition of real estate by the seller/mortgagor, the donor (depending on the type of disposal), and determines whether the real estate is marital property, e.g. of the seller in the contract for the sale of real estate, for the purpose of obtaining the consent of the spouse for the disposal of the real estate, which is possibly marital property. However, in practice, several controversial issues arise in the context of the conflict between the principle of trust in land records and the risk for the buyer, that possibly the spouse, who is not registered as a co-owner, disputes the legal transaction in question in civil proceedings. The above-mentioned situation can certainly lead to an unenviable position for both the parties to the contract in the legal business, as well as the notary who notarizes the contract at the request of the parties. This paper will provide an overview of the open issues of determining matrimonial property in the procedure of notarization of real estate contracts, as well as an overview of legislation and relevant court practice in Bosnia and Herzegovina.*

Keywords: *real estate transaction agreement, matrimonial property, principle of trust in land registers, consent of spouse FBiH Notary Law, Republika Srpska Notary Service Law*