

Advantages and guarantees of using deposit account in disposition of property

It is important to enlighten our citizens and expand their knowledge about their civil rights, as well as the rights on disposition of property and its realization. Each citizen uses his/her rights in accordance with their own legal knowledge, and realizes his/her rights and legal interests accordingly. In this case, the media plays an irreplaceable role and acts as a bridge between legal institutions and citizens.

According to the social and economic improvement dynamics of our country, civil turnover has been expanded and number of civil law transactions has been increased in recent years.

Notarial system plays a key role as a law enforcement agency in regulation of civil law turnover – both in official provision of rights, and indisputable establishment of these rights. Main mission of notarial system is to provide rights of citizens and civil turnover legally and prevent future civil law disputes. It arises from the function of notary as an impartial human rights defender which belongs to notaries of the countries with continental legal system that our country is also included. Notarial regulation minimizes future civil law disputes. It should be noted that, number of civil law disputes in the countries with continental legal system where notaries are officials documenting and regulating civil law relations in society are 3-5 times less than in other countries.

Registration of real estate transactions, especially agreements on disposition of property is a significant and necessary part of civil law turnover. Legal registration of disposition of property, as well as legal guarantee and practical procedures of this registration is carried out through notarial service. As a result, disposition of property is certified by a notary who is a professional lawyer trusted by the state, an official of notarial institution acting as a defender of rights of individuals and legal entities, who was formed over a long historical period and is constantly improving. With this formalization and certification, civil law relations are comprehensively regulated - both in terms of rights and legal interests. At this point, it is worth recalling the famous saying: “A notary is a defender of all parties of the notarial act and an arbitrator between them and law.

The agreements on disposition of objects of property in civil turnover, including real estate purchase and sale agreement, gift agreement, property exchange agreement, rent agreement, mortgage agreement, tenancy agreement, lease agreement and other agreements are the most important parts of notarial acts in the country.

According to Article 144 of the Civil Code of the Republic of Azerbaijan, agreements on disposition of officially registered objects of property shall be notarized.

In the context of recent improvements in notarial legislation, alienation and mortgage deals involving the disposition of property, which previously abolished the former territorial jurisdiction over real estate, may be approved by any notary office, regardless of the location of the property in the Republic of Azerbaijan.

Duties and fees under agreements on disposition of property in our country are fairly defined by territories and exclude the deduction of large amounts, such as property ratios in some countries (up to 3% of the value of this property in many countries).

The procedure for notarization of agreements on disposition of property has been simplified, streamlined and improved following recent amendments made in legislation and electronic notaries. As a result, there is no need for citizens to collect certificates and documents from different departments and organizations at different times and submit to notaries, and all of these are ensured by the implementation of notarial acts by obtaining them directly by the notary through the electronic notarial system. Compilation and certification process of all notarial acts, as well as real estate agreements are carried out through “Electronic notary” information system. Electronic notary (e-notary) system is an electronic information system that connects all notaries acting in the country in a single network, provides direct electronic access of the notary to the electronic registers of other state bodies and use of those information systems, performs notarial operations carried out by notaries electronically in real time and keeps an electronic archive of those operations.

In order to check the property rights and obligations of the party disposing of real estate, as well as the existing encumbrance of the property in the state register of real estate, notaries and the State Register of Real Estate were provided with the opportunity to exchange information and documents, as well as notaries have direct access to the register. It means that, electronic form of ownership document of property, certificate confirming restriction and encumbrance on it and deeds have already been obtained electronically by notaries.

While drawing up notarial documents through “Electronic notary” information system, the information on identity cards of individuals whom notarial acts have been performing for are obtained from “State Registry of Population” automated registration information system. Civil status of individual, including information on birth, marriage, death etc. are obtained from “Civil status acts” automated registration information system. Information on place of residence of individuals, as well as necessary information on taxpaying individuals and legal entities are obtained through automated information systems that notaries have a direct access.

Features of the electronic notarial information system are special items related to the value of real estate, payment of the agreed sale amount in a deposit account or in cash, as well as items on the mechanical calculation of the tax amount when drawing up contracts for disposition of property.

To ensure the validity and completeness of the legal execution of agreements on disposition of property, the money that parties have to pay to each other should be transferred through a deposit account opened by a notary in a bank account. This bank account is not a notary's current account, but a special deposit account not intended for other notarial transactions, but for the formal and non-cash transfer of amounts to be paid to each other under the contract.

If we look at the date of application of the deposit account and the advantages of this application, we can see that until the end of 2005 in the country the purchase and sale of real estate, exchange or payment of agreed amounts under agreement such as rent, at the time of notarization of the agreement was paid in cash to the seller, which in some cases led to litigation over whether or not to pay later. Thus, some buyers filed lawsuits alleging that they did not receive full amount of sales specified in the agreement from other party, or that the amount was not paid to them at all, which led to numerous litigations.

The non-payment of money through a deposit account, for example, the non-use of non-cash settlements, shadowed the validity and credibility of the payment of the agreement price, which is an important element of exchange agreements.

In order to prevent the above-mentioned undesirable situations and to strengthen the security of the agreement, the mechanism of transferring money through a deposit account and making a payment by bank transfer and thus registering the payment was an important and effective step in this area.

In order to prevent all these litigations and claims at courts, the Cabinet of Ministers of the Republic of Azerbaijan made crucial decision. Under the decision № 231 of the Cabinet of Ministers dated 19.12.2005, some amendments and additions were made to the “Instructions for performing notarial acts in the Republic of Azerbaijan”. According to the decision and under paragraph 160.1 of the Instructions, while notarizing agreements on disposition of property, payment of amount from one party to another which is more than the amount identified (at the moment this amount is 5500 manat) by the relevant executive body of the Republic of Azerbaijan shall be made through the deposit account opened by notary at the bank and a notary certifies the agreements after submission of the bill confirming the payment of amounts to deposit account opened at the bank.

According to the amendment made by the decision № 261 dated 11.06.2018 to the “Instructions for performing notarial acts in the Republic of Azerbaijan”, not only the disposition of movable and immovable property, but also the transfer and return of funds from one party to another when notarizing agreements on the donation, depositing and lending of money, as well as the amount paid under the original agreement must be made through a notary’s deposit account.

The application of the decision played great role to prevent future disputes on the amounts of money, as well as it was one of the factors determining the legal validity of the agreements. Thus, for the lawfulness of any transaction, the authenticity and correctness of the expression of the true will, for example, the compliance of the transaction with the expression of the will and the true intentions of the parties, is an important condition of the agreement. From this point of view, the payment of funds by deposit, of course, reflects the true intention of the parties and their agreement, that the agreement is not formal, but real. With the consent of mortgagee, as well as under the notarized agreement between mortgagee and mortgagor, when selling the subject of mortgage, the obtained amount is divided through notary’s deposit account with the consents of both parties and in accordance with the law.

In addition, according to the amendment made to Article 218 of the Tax Code of the Republic of Azerbaijan, persons disposing of their property in the manner of alienating property, are subject to a simplified tax at the source of payment since 01.01.2016 while submitting their property, and the withholding of this tax and its payment to the state budget is ensured by a notary as a tax agent. In order to transfer the calculated simplified tax from notary’s deposit account into state budget, before certifying the agreement, a notary gives money order to a seller and under the money order the seller pays the calculated simplified tax from the amount in the notary’s deposit to the state budget and submits the bill to the notary, and that will provide the payment of tax amount by disposing of the amount in deposit account by notary in time.

As a result of the introduction of payment of funds through the notary's deposit account, we no longer meet disputes over non-payment of money under the agreement.

The notary's deposit account is not only an aid to the legal security of the agreement, but also serves as one stop shop, reducing the loss of time spent by contractors who do not have a personal bank account to open a separate bank account.

Settlements through notary's deposit account ensure that agreements are legally and actually valid, also prevents future disputes.

Payments made through notary's deposit account are deemed to be economically regulating tool that stimulates cashless settlements.

Notaries are participants of the monitoring that supports prevention of money or other property laundering and terrorism financing, therefore payment through deposit account is deemed to be significant legal method.

As notarial activity is the insured type of activity, it increases reliability and security of transactions while applying the method of payment through deposit account in disposition of property and its registration.

Today establishment of both legal basis that is necessary for notarial services, and electronic information basis that is necessary for effective implementation of notarial activity, use of progressive opportunities and guarantees related to disposition of property makes notarial services more comfortable, flexible and secure. Providing professional legal services to citizens by making comprehensive use of these opportunities is one of the main requirements of the society for legal services, and today notaries widely use the existing opportunities in this direction.

As a result, informing our citizens in detail about the legal possibilities of civil turnover and civil-legal guarantees, their use of their rights and legitimate interests, directly increases the satisfaction of citizens, as well as increases the efficiency of notarial activities. We, as notaries, are always ready to serve our citizens for this purpose.

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