



Real Estate Sales Agreements: What Has Changed After the Significant Amendments in the Law No. 1512 on Public Notary?

Authors: Gönenç Gürkaynak, Esq., Ceyda Karaođlan Nalçacı, Tuđba Uluay and Iřıl Ertekin, ELIG Gürkaynak Attorneys-at-Law

I. Introduction

A real estate sales agreement is an agreement that is executed by and between the buyer and seller for the acquisition of real estate and is regulated under the Turkish Code of Obligations No. 6098 (“**Law No. 6098**”). By executing the real estate sales agreement, the seller promises to transfer the real estate and the buyer promises to pay the sale price of the real estate. Pursuant to the Article 237 of Law No. 6098, real estate sales agreements are subject to the official form requirement. In order to fulfill this requirement, the real estate sales agreements used to be only executed before the land registrars since Article 26 of Land Registry Law No. 2644 (“**Law No. 2644**”) specifically authorizes land registrars to execute the real estate sales agreements.

Law No. 7413 on the Amendments to the Law on Judges and Public Prosecutors and Certain Laws (“**Amendment Law**”) published in Official Gazette dated 28 June 2022 and numbered 31880, introduces important amendments to Law No. 1512 on Public Notary (“**Law No. 1512**”) and authorizes public notaries to execute real estate sales agreements. Before the amendment, the authority of public notaries to execute real estate sales agreements used to be an issue of conflict since there was no specific regulation authorizing the public notaries for the execution of the real estate sales agreements. Moreover, different chambers of the Court of Cassation had different judgments with regard to the authority of public notaries for the execution of real estate sales agreements. The Amendment Law ended the conflict on whether public notaries are authorized to execute real estate sales agreements.

II. General Conditions of Real Estate Sale Agreements before the Amendment

As explained above, before the Amendment Law, there was a conflict on whether the public notaries are authorized to execute real estate sales agreements. Even though the public notaries used not to be authorized to execution of real estate sales agreements in accordance with Law No. 1512, they were authorized to execute real estate presales agreements.

In order to fulfill the official form requirement that is indicated in Article 237 of Law No. 6098, the buyer and the seller used to execute the agreement before the land registry because Law No. 2644 has a specific regulation authorizing the land registrars to execute real estate sales agreements. On the other hand, the authority of public notaries for the execution of real estate sales agreements used to be an issue of conflict. Since Law No. 1512 had not authorized the public notaries to execute real estate

sales agreements, there used to be an opinion indicating that only land registrars were authorized for execution.

III. General Conditions of Real Estate Sale Agreements after the Amendment

As we explained above, real estate sales agreements are subject to the official form requirement. With the amendments made to the Article 60 of the Law No. 1512, the duties of the public notaries have been revised and the public notaries have been authorized to the execution of real estate sales agreements in addition to the execution of preliminary agreements for the real estate sales. Pursuant to the amended Article 60 of Law No. 1512, the real estate sales agreements can be executed before the notary publics as well as the land registry offices.

Once the application for the sale of real estate is made by the parties, the public notary will issue an application document. The General Directorate of Land Registry and Cadaster will share the title deed record and other relevant documents with the public notary via the land registry information system. The public notary will review and examine whether the submitted documents are complete. If the submitted documents are not complete, the public notary will request the missing records and documents from the relevant land registry office through the land registry information system. The land registry office will provide the requested records and documents to the public notary. Also, the public notary will also determine the identity of the right holder, and whether there is a legal situation preventing sale of the real estate. If the public notary determines that there is no legal obstacle preventing the sale of the real estate, the public notary will prepare the real estate sales agreement for execution. Following the execution of the real estate sales agreement by the parties, the public notary will submit the real estate sales agreement and relevant documents to the land registry information system for registration and will archive them physically. Once the real estate sales agreement is recorded to the land registry information system, it will be registered to the respective land registry by the land registry office.

In addition to the above, according to the amendment made to Article 162 of Law No. 1512, public notaries are also held responsible for the damages arising from the preparation of the real estate sales agreements.

In accordance with the Law No. 1512, the real estate sales agreements executed by the public notaries will be exempted from stamp tax and the papers issued for these transactions will also be exempted from valuable paper fee. For the real estate sales agreement to be executed by the public notaries, only the title deed fee will be charged in line with the subparagraph (a) of paragraph (20) of the section titled "I-Title deed transactions" of the tariff numbered (4) attached to the Law on Fees numbered 492. In addition to the title deed fee, the notary fee shown in the fee schedule, as long as it is not less than TRY 500 and not more than TRY 4,000 depending on the value of the real estate and the service fee to be registered as revenue to the Revolving Fund Management of General Directorate of Land Registry and Cadaster will be charged as a result of sale of the real estate by the public notary.

The Ministry of Justice will regulate the details of this practice by a communique to be issued. Pursuant to Article 14 of the Amendment Law, the regulation authorizing public notaries to execute real estate sales agreements will enter into force when the completion of the installation of the land registry information system is announced on the Ministry of Justice's website until 1 January 2023.

IV. Conclusion

The regulation authorizing public notaries to execute real estate sales agreements aims to end the long-debated issue on whether the public notaries are authorized to execute real estate sales agreements and conclude transactions of sale of real estate in an easier and faster manner by authorizing the public notaries. The details of this practice will be determined by the Ministry of Justice once the Ministry of Treasury and Finance and Ministry of Environment, Urbanization and Climate Change provide their opinion on this matter.

Article Contact: Gonenç Gürkaynak, Esq.

E-mail: gonenc.gurkaynak@elig.com

(First published by Mondaq on September 23, 2022)