

## IMPORTANCE OF REGISTRATION OF SPECIAL PARTS OF FACILITIES IN THE REAL ESTATE CADASTRE

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*Summary: As a result of a various socio-economic factors, a large number of facilities (buildings) in the Republic of Serbia have been built in the last decades without official permit for construction or use. It is estimated that the number of such buildings is more than two million. The state's interest is to register in the Real Estate Cadaster all objects built outside of regulations, which do not endanger health and safety and which are found to fulfill the conditions for legalization. This will increase efficiency of real property taxation of such properties, more efficient planning and land use, and real estate holders will be able to fully dispose of their rights in relation to real estates.*

*In the procedure of registering special parts of the facilities, it is necessary to prepare technical and legal documentation, which also implies the physical division of buildings and real property rights. This paper will focus on registration procedure for special parts of facilities in the Real Estate Cadastre, problems that arise within this process, such as the clarifications of why this registration will bring numerous benefits for the state and the citizens.*

**Keywords:** legalization, facilities, physical division of real estate, registration

### 1. INTRODUCTION

Real Estate Cadastre (REC) is a basic and public register of real estate and property rights in the Republic of Serbia (RS). Real estate that are subject to registration in the Real Estate Cadastre are divided into three groups: land (parcels), over ground and underground constructions (facilities, buildings) and special parts of construction that make up part of construction unit [8]. Real Estate Cadastre was created by unifying the registers that had already existed on the territory of Serbia dealing with the real estate and property rights, such as: Land Cadastre, Land Book, Title Deed Book and other records that were under the jurisdiction and were maintained by Local Courts and Local

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Administration in charge of real property registration. The process of unifying all existing registers and records of real estate and pertaining property rights was initiated in 1988 by the adoption of the *Law on State Survey and Cadastre and Registration of Real Property Rights*, but the biggest work in this area was done in the period 2004-2012, during the implementation of the Project financed by World Bank loan named: "Real Estate Cadastre and Registration Project in the Republic of Serbia". The establishment of the Real Estate Cadastre on the territory of the Republic of Serbia required maximum engagement of administrative capacities of the state body in charge of state survey and cadastre, i.e. Republic Geodetic Authority (RGA), as well as international financial assistance, because of the importance of this register for the Republic of Serbia and the society as a whole.

One of the basic principles of the Real Estate Cadastre is the principle of reliability (trust), according to which "data on real estate entered into the Real Estate Cadaster is deemed to be correct and trustworthy, and no one shall bear harmful consequences for relying on such registered data." [8]. The frequently asked question is: "Does the Real Estate Cadastre contain data on all real estate in the territory of the Republic of Serbia?". Unfortunately, the answer is negative. It is publicly known information that even today in the 21st century, there is a large number of real properties in Serbia that are not registered in the Real Estate Cadastre.

There are numerous reasons for not having up-to-date data in the Real Estate Cadastre and some of them are: the inability to harmonize data when merging different registers and real estate records at the stage of establishment of the Real Estate Cadastre; non-existence of accurate records concerning real estate and property data that were transferred from previously existing registers; the duration of the procedure of establishment of the Real Estate Cadastre; lack of interest of holders of real property rights for their registration in the Real Estate Cadastre; non-application of enforcement measures for not registering changes of real property in the Real Estate Cadastre and many others. The biggest problem that led to out-of-date Real Estate Cadastre is the construction of facilities that are built contrary to the legal provisions regulating construction, so called "illegal construction", which cannot be registered into the Real Estate Cadastre without previously obtaining permits from the authorities in charge of urban planning and construction.

The period when the illegal construction was the most intense, the nineties of the last century, coincided with the beginning of the establishment of the Real Estate Cadastre, that is, the unique register of real estate and property rights on them. Even assuming that there was an interest in the construction of facilities in accordance with the legal regulations and registration of their proprietary rights into the real property registers at the time, the question arises: "Whether the state had administrative and financial capacities at the time to maintain registers or real estate and property rights data and solve numerous social, political and other issues that were imposed in that period?". In this paper the problems which the state is struggling to overcome in this area will be indicated, as well as the procedures that are used in the process to overcome them.

## 2. LEGISLATION OF BUILDINGS

The last decade of the 20th and the beginning of the 21st century in the Republic of Serbia was marked with numerous challenges when it comes to construction and registration of properties in the Real Estate Cadastre. Construction was intensified, but at the same time, disregard of standards, regulations and conditions for construction was noted, which, in this area, led to consequences whose rehabilitation requires significant resources and efforts.

Migration of population to larger cities, as well as increase in the number of inhabitants by immigration from the war-affected areas, can be considered as social reasons for the appearance of urban disorder. Under circumstances, when it was necessary to provide accommodation for thousands of emigrants, it appears that unplanned construction was the least concern of the population and the state. At the time, the socio-economic reasons for unplanned construction were: lengthy and complicated procedure for issuing building permits and inability of state and local administration to cope with the sheer number of permit requests which led to people starting construction without permits in order to secure a place to live; and lack of enforcement of regulations pertaining to oversight of ongoing construction by building inspection in charge of checking building permits which resulted in popular opinion that building permit is not necessary for building construction.

From today's point of view, one could argue that there was a tacit consent of the state for unplanned construction. In conditions when the number of inhabitants and the need for construction have been suddenly increased, the state has faced the problem of lack of planning documentation which is the base for planning and construction. In spite of this, there was evident lack of coordination of work among state authorities, as well as the length of the initiated procedures for obtaining a construction and other permits and unsystematic solution for problems observed, which can be considered as organizational problems that led to the formation of settlements that do not meet the basic urban conditions. Settlements were built without plan; numerous buildings did not have street access; it happened that several buildings shared the same connection to electrical power and water supply; the sewerage network was not developed at all; the roads network did not meet the design requirements nor the needs of the occupants; nonexistence of facilities such as schools, markets, health centers, green spaces, etc.

In the past, there were several attempts to prevent illegal construction and to legislate already existing illegally constructed buildings, but the impression is that these actions did not have significant effects. The last measure of the Serbian Government is the adoption of the *Law on Legalization of Buildings* in November 2015, with the goal to bring all illegally constructed buildings into the legal flows. This Law governs the conditions, procedure and manner of legalization of buildings, or parts of buildings built without a building permit (illegally constructed buildings) i.e. issuing, conditions, manner and procedure for issuing of use permits or post factum building permits, legal consequences of legalization, as well as other issues significant for legalization of buildings, part of buildings and underground and over ground utilities if, due to the technical characteristics and position, they represent independent facilities. [9].

The legal base for the legalization of facilities is also the *Law on Planning and Construction (LPC)*, which regulates, in more detail: the development and use of construction land and construction of buildings; carrying out supervision over the

application of this Law and supervisory inspections; other issues of significance in the development of space, landscaping and use of construction land, and the construction of buildings [10]. According to LPC, planning documents are Spatial and Urban plans, which constitute the planning documents of spatial planning and development in the Republic of Serbia and represent the basis for the legalization of buildings. Another basis for legalization of buildings are also the laws related to the management and protection of water, land, forests, environmental protection, historical sites, protected areas, as well as numerous other legal regulations and bylaws, which must be taken into consideration when considering the conditions for legalization of buildings.

According to the data available on the portal of the Ministry of Construction, Transport and Infrastructure (hereinafter: MCTI) (retrieved on February 22, 2019) [2], and under the assumption that this information is correct, the number of buildings built in contravention of the *Law on Planning and Construction* is more than 2 million, of which the highest number are residential buildings - 45.9%

Table 1. Illegally built facilities in RS according to MCTI (22.02.2019.) [3]

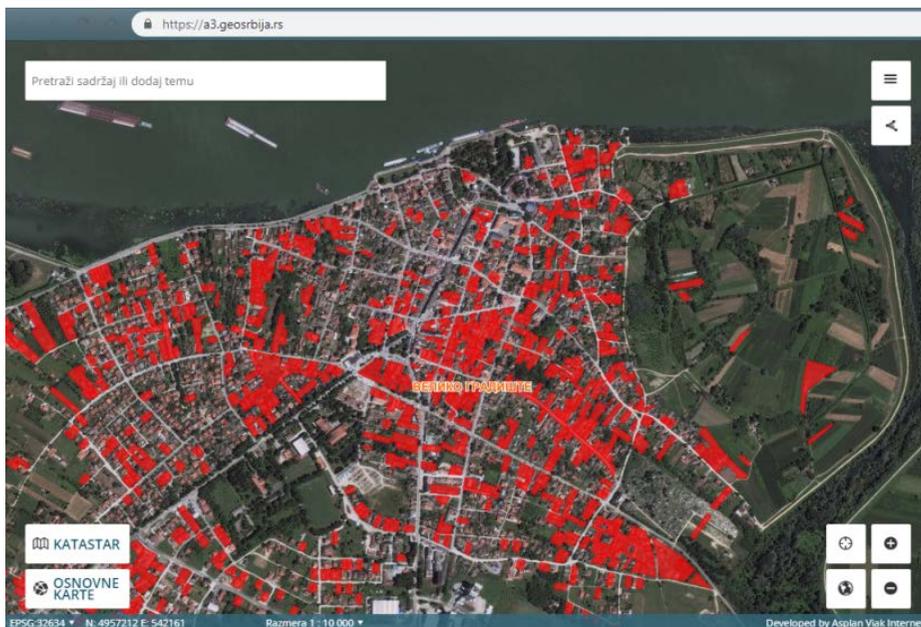
Type of facility	Number	%
Residential	940.656	45,9
Business	36.612	1,8
Residential - business	18.918	0,9
Commercial	17.470	0,9
Auxiliary	711.450	34,7
Economy	242.475	11,8
Production (Industrial)	9.260	0,5
Other	18.594	0,9
<b>Total</b>	<b>2.050.614</b>	<b>100</b>

The largest number of illegally constructed buildings is in Belgrade administrative district (13%), then in Mačva (9.8%) and South Banat (5.5%) districts, while the fewest recorded illegal facilities are in district of Pirot (0.5%). On the basis of the recorded illegal facilities, Local municipal administration authorities responsible for urban planning issue Demolition Decisions for all illegally constructed buildings, which are submitted to the ministry in charge of construction affairs (i.e. MCTI), as well as the governmental authority in charge of state survey and cadastre (i.e. Republic Geodetic Authority). Republic Geodetic Authority uses Demolition Decisions delivered by administration authorities in charge of planning and construction to map all the land parcels where illegally constructed buildings covered by delivered Decisions are located. This data is publicly available on the National Geoportal called *GeoSrbija*.

Figure 1 shows a part of the orthophoto image of the territory of the Municipality of Veliko Gradiste, where RGA identified cadastral parcels (marked in red color) on which the buildings covered by Demolition Decisions were identified and recorded. With the cooperation between the RGA and the MCTI, in order to establish the Register of the issued Demolition Decisions for illegally constructed buildings, a software tool for recording the Demolition Decisions was made. This software was made with the purpose to centralize the issued Demolition Decisions and to enable the local self-governments to quickly and precisely search the database of decisions made. Demolition Decisions are entered into the Register of Demolition Decisions on the basis of the cadastral municipality, the number and sub-number of the cadastral parcel and type of illegal

facility, and the access to the application is available on-line to the authorized and registered users on the RGA portal [5]. The dynamics of publishing data on *GeoSrbija* depend on the dynamics of the input of the Demolition Decisions into the Register.

Legalization of illegal buildings is quite a challenge for the Republic of Serbia. According to the data available on the RGA's portal retrieved on February 25, 2019 there are 4,774,222 registered buildings in the Real Estate Cadastre [4]. As already mentioned, under the assumption that the number of recorded illegal facilities available on the MGSI portal is correct, then it can be concluded that approximately 30% of all buildings in the Republic of Serbia are illegally constructed.



*Figure 1. Graphical presentation of the issued Demolition Decisions on the part of the territory of the Municipality of Veliko Gradiste on portal GeoSrbija [1]*

Illegally constructed buildings were not subject to property taxation and collection of property tax because initial property tax registers were based on cadastral records. The exception were cases where local tax administrations in charge of property taxation and collection of property tax, had received Tax Declaration from the property owner regarding his property right on real estate. In order to improve property tax revenue, local governments decided to undertake updating property tax records on their own with greater or smaller success rate depending on the municipality and their way of bringing tax rolls up to date. Due to very heterogeneous way of collection and data collected this created a lot of discrepancy between cadastral records and property tax rolls creating more obstacles. Due to disparity of records and difficulty in proving ownership, both tax rolls and tax collection rate are considerably lower than local governments would like. This translates into considerable financial losses for local governments' budgets, which then need to be supplemented from the state budget so even though the most visible

impact of illegal construction is on the local governments and municipalities, there is an indirect, but also significant, impact on the budget of Republic of Serbia as well.

For the purpose of realization of the project of Mass Property Valuation, that is a subcomponent of the World Bank's: "Real Estate Management Project in Serbia", from the Project's funds, very high resolution satellite images of the whole territory of Republic of Serbia were purchased in 2016. Side benefit of these satellite images is the use for the needs of the state administration and local self-government administration in the process of legalization of illegally constructed buildings. In addition to the purchase of satellite images, the Government also allocated funds for engaging of human resources working on legal affairs in Local municipal administrations, whose number depends on the number of illegal facilities on their territory of cities and municipalities. The fact that the prohibition of employment in the public sector is in force since 2014, and that an increase in the number of employees dealing with legal affairs is planned for more than 1,000 [2], testifies that the legalization of buildings is a public interest for the Republic of Serbia, as defined in the Law [9]. The expected effects of legalization are numerous: accurate Real Estate Cadastre; increased revenues from collecting property taxes and other taxes; removal of buildings that do not meet the prescribed construction conditions; as well as objects that present risk to life and health; enabling a greater degree of implementation of electronic procedures in the field of real estate management and many others.

### 3. REGISTRATION OF SPECIAL PARTS OF BUILDINGS (FACILITIES) IN THE REAL ESTATE CADASTRE

According to *The Law on State Survey and Cadastre*, general conditions for the registration of property rights, pre-registration and registration in the Real Estate Cadastre are the existence of: registered real estate, registered predecessors and appropriate registration documents, as prescribed by the Law [8]. This procedure is simple when the real estate is registered in the Real Estate Cadastre. If it's not, there are two ways of registration, depending on the method of obtaining a registration document: based on the document obtained in a consolidated procedure<sup>4</sup> or based on legalization.

In May 2018, Serbian Government adopted *The Law on the Registration Procedure with the Cadastre of Real Estate and Utilities*. This Law governs the rules of registration procedure with the cadastre of real estate and the cadastre of utilities maintained, the subject and types of registration in such procedure and the rules of the procedure for issuing excerpts from the stated registers, and other issues of importance for maintaining real estate cadastre and cadaster of utilities. The provisions of this law regulating the subject and types of registration should also apply to the procedure for cadastral renewal, unless otherwise provided by law. [11]. According to this Law, the registration of special parts of the buildings is carried out in different ways [11]:

- Data on the building and special parts of buildings for which a use permit has been issued in a consolidated procedure (in accordance with the law governing planning and

<sup>4</sup> The consolidated procedure includes the issuance of a construction permit and the decisions defined in art. 145 of *The Law on Planning and Construction*.

construction) shall be registered on the basis of use permit and the Geodetic works study.

- Data on the special parts of buildings for which no use permit has been issued in a consolidated procedure (under the law governing planning and construction) shall be registered as follows:

- 1) In the case of real estate property for which a use permit or a building permit has been issued, the data on the special part shall be registered on the basis of those permits if it contains such data; otherwise, special parts will be registered on the base of the certificate from the competent authority (issued on the base of the technical documentation upon which a building permit or a use permit has been issued, and if the competent authority is not able to issue such a certificate), or on the basis of the findings and opinions of the permanent court expert in the field of construction on the circumstances of the data on a special part of the building according to building or usage permit;
- 2) In case of a real estate built before the construction regulations came into force<sup>5</sup>, depending on the type of building, the data on a special part of such a building shall be registered on the basis of the certificate of the competent authority or findings and opinions of the permanent court expert in the field of construction;
- 3) In case of real estate for which a permit has not been issued and which was not built before the construction regulations came into force, the data on a special part of the building shall be registered on the basis of the Geodetic works study.

Registration of over ground and underground buildings in the Real Estate Cadastre through the legalization procedure represents a great challenge for the profession, first of all because of an inability to estimate the exact number of illegally constructed buildings, as well as the number of special parts of these buildings (apartments, commercial spaces, garages and others). The procedure of registration of illegal over ground buildings is facilitated by the purchase of satellite images, but registering illegal underground buildings and utilities and their special parts could be treated as a challenge. Therefore, it cannot be foreseen when the legalization process of all illegally constructed buildings and their special parts will be completed.

Practically, the process of legalization begins and ends in the Republic Geodetic Authority. Local RGA offices are in charge of issuing excerpts from the Real Estate Cadastre, which represent the proof of property rights. Namely, the procedure of legalization is initiated by determining the appropriate right on the construction land or building that is a subject of legalization. The subject of legalization may be a building for which the owner provides proof of the appropriate right on the construction land or building, depending on which type of work or type of building is subject to legalization. The ownership of the building; the right of ownership, the right to use or the right to lease publicly owned construction land, and other rights prescribed by the Law on Planning and Construction, as well as appropriate rights on construction land are considered as property rights in terms of legislation of illegally constructed buildings. The procedure of legalization continues with the preparation of the Report on current condition of special part of the building, whose integral part is the Geodetic works study.

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<sup>5</sup> *The General Regulation on Construction* ("Official Gazette of the FPRY", no. 46/48), *The Law on Conditions for the Construction of Residential Buildings in the Country* ("Official Gazette of PRS" no. 7/61) or *The Law on the Construction of Investment Facilities* ("Official Gazette of SRS" no. 25/73)

The Report on current condition of special part of the building is made by a company or other legal entity or entrepreneur, which are registered in the appropriate register. In practice, this report is made by an architect-designer with the appropriate license. The contents of the Report on current condition of special part of the building for the purpose of legalization depends on the class, area, purpose and use of the building and is prescribed by the Law. Geodetic works study must be in accordance with the regulations governing state survey and cadastre, and is produced by licensed private geodetic organizations. When the buildings are already registered in the graphical base of the Real Estate Cadastre, a copy of the cadastral plan with the rooftop height of the building, certified by the authorized geodetic organization is submitted instead of the Geodetic works study. If the object of legalization is a building consisting of special physical parts, the Geodetic works study is made for the building and for all special parts of the building.

The method for calculating the area of a building is regulated by the standard JUS U.C2.100 2002. This standard determines the method for uniform calculation of areas in the process of planning, designing, construction and the final sale of a facility.

The characteristic areas of a building are (Figure 2.):

- A) covered area
- B) net usable area
- C) gross constructed area.

Covered area is the area of the land covered by the building after it is completed. Net usable area is the area between walls and partitions. Gross constructed area is the area determined by the external measures of finely processed elements (facade walls, fence).

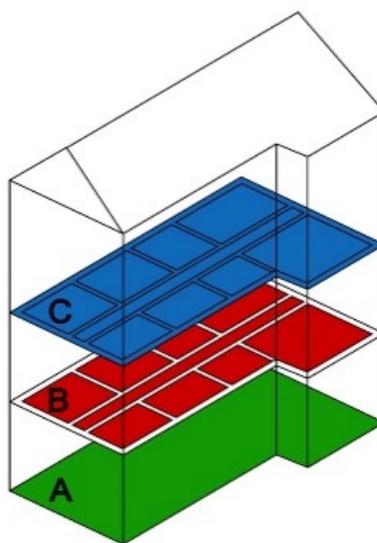


Figure 2. The characteristic areas of a building [6]

When purchasing or selling special parts of buildings, net usable area must be used. For their calculation, measurements are made between the finally processed walls at the floor level, without taking into account the dimensions of the battens, curbs, etc. The floor area under the doors, windows, alcoves and niches above the level of the floor are not calculated in net usable area. Surface area of the radiators, installed parts of furniture, equipment etc. are calculated in the net usable area.

Only part of the attic in which its light height is at least 1.5 meters is counted in the net usable area. As for the terrace, the built fence is not counted on the net surface.

However, as far as the steel fence is concerned, as it falls into the elements of the equipment, the area under it, is counted in the total net usable area.

For the registration of one or several parts of the building, as well as in case of an extension needed to be calculated in a usable net area or when it is necessary to divide facility into several parts that are in the ownership of different persons, it is necessary to make a Study on separation of special parts of the building. This Study will define the gross and net surfaces, as well as the surfaces of the common areas of the building, which will be the base for the registration of special parts of the building in the Real Estate Cadastre. The process of legalization of facilities ends with the issuance of a Legal Decision, i.e. a legal document enabling the facility registration in the Real Estate Cadastre (use permit), or completion of the legalization process. The registration of the facilities in the Real Estate Cadastre and Cadastre of Utilities is deemed to be final on a validity date of the Legal Decision. An authority responsible for legalization submits to the Republic Geodetic Authority the following documents: Geodetic works study and a copy of the final decision on legalization, after which the RGA issues a decision on the house number and makes the registration of the property right on the building or special parts of the building [9]. It is important to note that the registration of buildings in the Real Estate Cadastre, that is made in accordance with Building legislation law is exempted from the payment of the registration fee which is normally paid in regular circumstances, which is another indicator of the simplification of the registration procedure compared with previous legal solutions.

#### 4. CONCLUSION AND DISCUSSION

The Real Estate Cadastre is a basic and public register of real estates and property rights, but only registered real estates and registered property rights. The information collected from the satellite image and the number of Demolition Decisions taken in the consolidated procedure showed that the Real Estate Cadastre is not up-to-date. In order to establish and maintain an accurate and complete evidence of real estate in the interests of the safety of legal transactions, which is achieved by the up-to-date introduction of complete and accurate data on real estates and property rights in the Real Estate Cadastre and Cadastre of Utilities, in May 2018 *The Law on the Registration Procedure with the Cadastre of Real Estate and Utilities* was adopted. The question arises: "What are the benefits and goals of the reforms undertaken in the last few years by adopting new and amending existing laws in the field of planning, construction and cadastre?". Some of the answers are:

- Creation of an up-to-date Real Estate Cadastre and, as a consequence, increased confidence of citizens in ownership records;
- More efficient collection of property tax and other taxes;
- Secure purchase of real property by preventing multiple sales of special parts of buildings by real estate sellers;
- Creation of a Building registry with up-to-date information on special parts of buildings;
- Establishment of the following principle in the relationship between citizens and the public administration: Documents governed by one state authority, in proceedings conducted in front of another state authority are not to be obtained by applicants

themselves, instead documents are exchanged ex officio between the authorities themselves. This concept is known in an international practice as a unified counter, and our regulations call it a unified procedure. In this concept, applicants (citizens) are not couriers for the public sector.

- The entire exchange of documents between applicants and the public administration, as well as within the public administration, is done exclusively in electronic way, or via e-Government;
- Creation of a more favorable business climate and greater security for investments;
- Creation of conditions for sustainable planning of land use and use of real estate;
- Improvements of business environment in the country, which can be seen through the ascendance of Serbia's position on the World Bank Doing business list.

Serbia made the process of obtaining building permits dealing faster in 2016 by: implementing an online One-stop-shop system for Electronic Issuing of Building Permits and by simplifying property transfer process by introducing effective time limits due to changes in Law on state survey and cadastre. Those changes immediately affected Serbia's ranking on a World Bank Doing business list as shown in Table 2.

Table 2. Serbia's ranking on a World Bank Doing business (DB) list per year [7]

Area	DB2015	DB2016	DB2017	DB2018	DB2019
Construction permitting	186	139	36	10	11
Registering property	72	73	56	57	55

The Doing Business list is a good instrument for making comparisons and adopting best practices and solutions from the most successful countries. According to the Doing Business methodology, the adoption of even the best regulations does not lead to a progress, if it is not accompanied with proper implementation. The time will show how much the planned reforms have been implemented and whether the goals set by the public administration have been fulfilled.

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## ВАЖНОСТ РЕГИСТРОВАЊА ПОСЕБНИХ ДЕЛОВА ОБЈЕКТА У КАТАСТРУ НЕПОКРЕТНОСТИ

*Резиме:* Као последица различитих друштвено-економских чинилаца, велики број објеката у Републици Србији је у последњим деценијама изграђен без одобрења за изградњу или употребу. Процењује се да је број оваквих објеката већи од два милиона. Интерес државе је да све објекте изграђене супротно прописима, а који не угрожавају здравље и безбедност и за које се утврди да испуњавају услове за озакоњење, упише у катастар непокретности. На тај начин ће бити омогућено њихово опорезивање, ефикасније планирање и коришћење земљишта и имаоци права на непокретностима моћи ће у потпуности да остваре своја права у вези са непокретностима.

У поступку уписа посебних делова објеката у катастар непокретности неопходно је припремити техничку и правну документацију, која подразумева и физичку деобу објеката - етажирање. Овај рад приказује поступак уписа посебних делова објеката у катастар непокретности, проблеме који се јављају у оквиру овог поступка, као и појашњења зашто ће ова регистрација донети бројне користи држави и грађанима.

**Кључне речи:** озакоњење, објекти, физичка деоба непокретности