

# Amended rules of proceedings for the protection of possession

## Legal newsletter



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Deloitte Legal Szarvas, Erdős and Partners Law Firm, a member of Deloitte Legal's international network, is providing its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.

In this issue of our Newsletter we wish to inform you of the changes introduced by Government decree No. 17/2015. (II. 16.) on proceedings for the protection of possession in the competence of the notary (hereinafter: Decree) as well as related practical issues. Below you will find a brief summary of the latest developments.

The Civil Code provides for the administrative proceedings for the protection of possession, referred to the competence of the notary. Upon the possessor's request, the notary may forbid a trespasser's trespassing behaviour based on the actual possessory status, or may order the restoration of the original status.

## Procedural rules collected

The Decree entered into force as of 1 May 2015, specifying new detailed rules to facilitate a faster and more transparent procedure for the protection of possession in the competence of the notary.

The most remarkable change offered by the Decree is that all the protection of possession rules are now consolidated in one place as opposed to former rules and procedural deadlines stipulated partly in the previous decree and partly in the Administrative Proceedings Act. This considerably enhances the easy interpretation of the rules.

## Sped-up process

One typical feature of protection of possession cases is that they especially require fast decisions, which is why legislators intended to speed up the process by adopting the Decree.

A new element in the regulation is that the notary only has fifteen days to conduct the procedure: the first ten days are open for the presentation of evidence, followed by a five-day period in which he must decide on the basis of the evidence whether to sustain the request and adopt a resolution or to dismiss the claim.

As a change from the old rules, the deadline may not be extended, i.e. the notary must conclude the property dispute based on the evidence presented by the parties in the evidentiary phase. Also, the procedure may no longer be suspended.

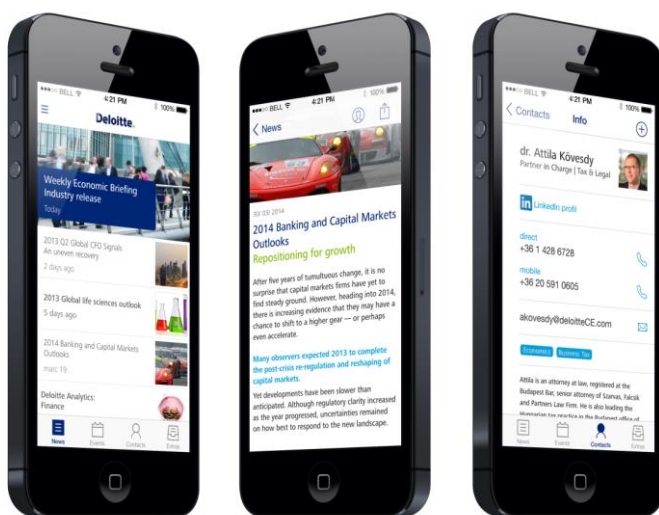
## Modified evidentiary procedure

The procedure must still be initiated at the notary in writing or through an oral request. It is maintained that there are no formal requirements regarding the claim; however – as the mandatory content elements are listed – notaries will probably assist their claimants by providing a form to be completed as was the previous practice.

Claimants need not attach the evidence to the claim as the notary is obliged to accept evidence all through the evidentiary phase.

### Other procedural rules

Unlike the previous regulation, the Decree clarifies that in a protection of possession case the notary may only adopt two types of resolution: either order the restoration of the original status if the claim was justified, or may forbid the other party to continue the unlawful behaviour. In all other cases the claim must be dismissed. It is interesting to note that presumption of delivery is established in a way completely different from other procedural rules: in case of the failed delivery of any resolution adopted in a protection of possession case, it shall be regarded as delivered on the day when it is returned to the notary.



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