

NEWS



LETTER

08/2021

**OFFICIAL DISPATCH
NO. 02/TANDTC-PC OF
THE SUPREME PEOPLE'S
COURT EFFECTIVE
FROM 08 FEBRUARY
2021 RESPONDING TO
SOME POINTS IN
HANDLING CIVIL CASE**

PUBLISHED BY LAC DUY & ASSOCIATES
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Dear Clients,

Lac Duy & Associates would like to send you the newsletter of August, 2021 with some outstanding new point and article as:

- Official dispatch No. 02/TANDTC-PC of The supreme people's court effective from 08 February 2021 responding to some points in handling civil case.
- Legal Documents 08/2021

TÒA ÁN NHÂN DÂN TỐI CAO **CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM**
Số: 02/TANDTC-PC **Độc lập - Tự do - Hạnh phúc**

V/v giải đáp một số
vướng mắc trong xét xử

Hà Nội, ngày 02 tháng 8 năm 2021

Kính gửi:

- Các Tòa án nhân dân và Tòa án quân sự;
- Các đơn vị thuộc Tòa án nhân dân tối cao.

Qua công tác tổng kết thực tiễn xét xử, Tòa án nhân dân tối cao nhận được phản ánh của các Tòa án về một số vướng mắc khi giải quyết các vụ án hình sự, dân sự. Để bảo đảm áp dụng thống nhất pháp luật, Tòa án nhân dân tối cao có ý kiến như sau:

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OFFICIAL DISPATCH NO. 02/TANDTC-PC OF THE SUPREME PEOPLE'S COURT EFFECTIVE FROM 08 FEBRUARY 2021 RESPONDING TO SOME POINTS IN HANDLING CIVIL CASE

Through the review of judicial practice, the Supreme People's Court has received reports from the Courts on a number of problems when dealing with civil cases. To ensure uniform application of the law, 08 February 2021, The Supreme People's Court issued Official Dispatch No. 02/TANDTC-PC to the People's Courts, Military Courts, and units of the Supreme People's Court to respond to some points in handling civil case. This is considered a very necessary document for Court levels to research and apply in practice in a timely and effective manner, specifically as follows:

1. Civil transaction is null and void

1.1. Mr. A forged Mrs. B's signature to transfer the house and land are owned by Mr. A and Mrs. B (married couple) to C. Then, C put this property up as collateral for a bank loan. So, is this mortgage transaction at the Bank null and void? If it is null and void, is it contrary to Section 1, Part II of Official Dispatch No. 64/TANDTC-PC?



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Article 123 of the Civil Code 2015 stipulates:

“Civil transactions with objectives and contents which breach legal prohibitions or which contravene social ethics shall be declared null and void.

Legal prohibitions mean provisions of law which do not permit entities to perform certain acts.

Social ethics are common standards of conduct as between persons in social life, which are recognized and respected by the community”.

In this case, the fact that Mr. A forged Mrs. B's signature to transfer the house to C without Ms. B's consent. This behavior is contrary to the general standards of behavior in social life. On the other hand, Mr. A and Mrs. B are husband and wife, the act of forging signature is against the basic principles of the marriage and family regime. **So based on Article 123 of the Civil Code 2015, the above house transfer transaction between Mr. A and C is null and void.**

Clause 2 Article 133 of the Civil Code 2015 stipulates:

“2. In cases where a civil transaction is invalid but the transacted property being a moveable property is not required to be registered and such property has already been transferred to a bona fide third party through another transaction, the transaction with the third party shall remain valid, except for the case specified in Article 167 of this Code”.

After receiving the transfer, C put this property up as collateral for the bank loan, but when signing the mortgage of property, the Bank did not assess and verify it, so the Bank did not know that Mr. A and Mrs. B still managed and used the property or the Bank has assessed but there are no documents or evidence to prove that Mr. A and Mrs. B know the mortgage of this property. In this case, **the mortgagee (the Bank) is not a bona fide third party as prescribed in Clause 2 Article 133 of the Civil Code 2015** and Section 1, Part II of Official Dispatch No. 64/TANDTC-PC, so the mortgage contract is also void

1.2. According to Official Dispatch No. 64/TANDTC-PC, in case the house and land transfer transaction is null and void, the transferee has been granted a certificate of house ownership and

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land use rights and has put up the house and land as collateral for the Bank in accordance with the law, based on Article 133 of the Civil Code 2015, the mortgage transaction is not null and void. So, does this guide apply to mortgage transactions arising before January 1, 2017 that is now in dispute?




For the above content, according to the Supreme People's Court, Clause 1 Article 156 of the Law on Promulgation of legal documents 2015 as amended and supplemented in 2020 stipulates: *“Legislative documents are applicable from their effective date. Legislative documents shall be applied to the acts committed at the time such documents are effective, except for those that have retrospective effect”*.

Thus, in general, the law at the time when an act occurs shall apply. When specific legal documents contain other provisions, such as retroactive regulations, then they will be applied differently from the general principles mentioned above.

Pursuant to the above provisions, **the guidance in Part 1, Section I of Official Dispatch No. 64/TANDTC-PC is applicable to civil transactions performed since January 1, 2017 but not to civil transactions performed before January 1, 2017.**

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2. Statute of limitations

Mr. A borrowed 1 billion dong from the Bank, the loan term is 1 month from January 2, 2017, the interest rate is 2% per month. After 1 month, Mr. A defaulted on the principal and interest. Within 03 years from February 3, 2017 to February 3, 2020, the Bank did not initiate a lawsuit to request Mr. A to repay the debt. Up to now, if the Bank sues to request Mr. A to repay the debt, does Mr. A have the right to request the application of the prescriptive period before the first-instance court issues a judgment or decision to settle the case?

To respond to above problems, The Supreme People's Court based on the provisions of Articles 429 and Article 155.2 of the Civil Code 2015, specifically:

Article 429 of the Civil Code 2015 stipulates: *“The prescriptive period for initiating legal action to request a court to resolve a dispute relating to a contract is 03 years from the date on which the party entitled to request knows or should know that their lawful rights and interests are infringed”*.

Pursuant to the above provisions, the prescriptive period for initiating a lawsuit to request the Court to settle the credit contract dispute between the Bank and Mr. A has expired.

However, according to Clause 2 Article 155 of the Civil Code 2015, the prescriptive period for initiating a lawsuit does not apply in the case of “request for protection of property rights, unless this Code or other relevant laws provide for otherwise”. **The credit contract dispute between the Bank and Mr. A is the disputes over ownership and property reclaiming. Therefore, the prescriptive period for initiating a lawsuit does not apply in this case.** The Bank can sue Mr. A to claim the property (principal debt) and the Court shall accept and settle the case, regardless of whether the parties request the application of the prescriptive period before the first-instance court issues a judgment or decide whether to settle the case or not.

3. Regarding the Court’s decision to suspend the case

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3.1. Mr. A must pay Mr. C an amount of VND 500 million, but Mr. A does not voluntarily execute the judgment. The judgment enforcement agency has determined that Mr. A and his wife had the right to use 156m2 of land and assets attached to the land but has not carried out the notification procedures as prescribed in Clause 1, Article 74 of the Law on Enforcement Of Civil Judgments, has not yet coerced judgment enforcement against Mr. A. Mr. C filed a lawsuit to request the Court to determine the portion of Mr. A's property ownership and land use rights in the common property. After accepting the case, the People's Court of District H issued a decision to suspend the settlement of the case on the grounds that Mr. C did not have sufficient conditions to initiate a lawsuit. So, is this suspension decision of the People's Court of District H correct?




Point d, Clause 1, Article 7 of the Law on Enforcement Of Civil Judgments stipulates that civil judgment creditors have the right to: *“Initiate civil lawsuits to protect his/her lawful rights and interests if there is a dispute over assets related to judgment enforcement”*.

Clause 1, Article 74 of the Law on Enforcement Of Civil Judgments stipulates:

“In case of failing to identify the proportion of asset ownership or land use rights of the judgment debtor in the common assets for judgment enforcement, the enforcer shall notify the judgment debtor

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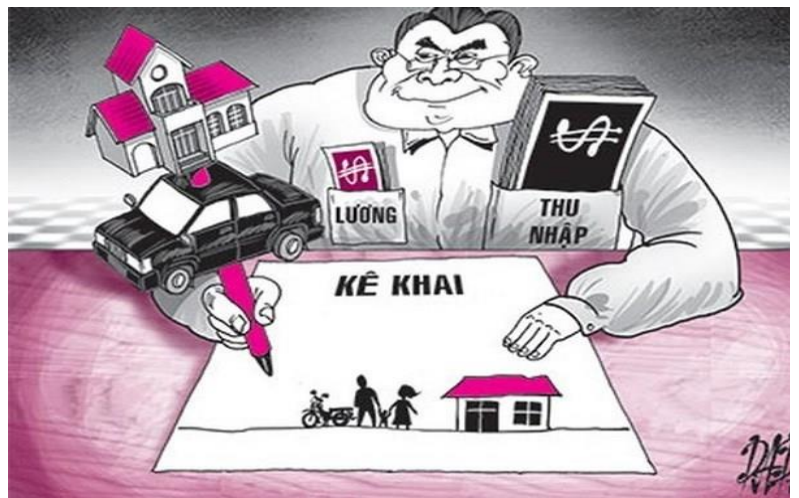
and co-owners of assets or land use rights so that they reach an agreement on division of common assets or request the court to settle the case according to civil procedure.

Past 30 days after receiving the notification, if no agreement is reached by the parties or their agreement violates the provisions of Article 6 of this Law or they cannot reach an agreement or do not request the court to settle the case, the enforcer shall notify the judgment creditor of his/her right to request a court to identify the proportion of asset ownership or land use rights of the judgment debtor in the common assets according to civil procedure....”

Clause 12, Article 26 of the Civil Procedure Code stipulates:

“Disputes relating to properties forfeited to enforce judgments in accordance with the law on enforcement of civil judgments” is one of the civil disputes under the jurisdiction of the Court..

Thus, the judgment creditor has the right to initiate a lawsuit to request the Court to determine the portion of the property ownership rights and the land use rights of the judgment debtor in the common property if and only if the civil judgment enforcement agency has carried out the procedures prescribed in Clause 1, Article 74 of the Law on Enforcement Of Civil Judgments. In the above case, the civil judgment enforcement agency has only determined that Mr. A and his wife have property as land use rights in the land plot of 156m2 and assets attached to the land, has not yet carried out the notification procedures as prescribed in Clause 1, Article 74 of the Law on Enforcement Of Civil Judgments but Mr. C has instituted a lawsuit to request the court to determine the portion of property ownership and land use rights of the judgment debtor in the common property. Therefore, the fact that Mr. C is not eligible to sue and the People’s Court of District H issued a decision to suspend the settlement of the civil case has a legal basis.



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3.2. The litigators have written sufficiently and accurately the residential addresses of the defendants and/or the persons with relevant interests and duties according to the address stated in the transaction or written contract. Does the Court have to request additional documents verifying the residential addresses of the defendants and/or the persons with relevant interests and duties to accept the case? During the settlement of the case, the Court cannot serve the procedural documents to the defendant and the persons with relevant interests and duties at the address stated in the transaction or contract provided by the plaintiff. The court conducted verification in the locality, the defendant had left the place of residence 06 months ago. In this case, does the Court decide to suspend the settlement of the case or continue to resolve the case?

Point e, Clause 1, Article 192 of the Code of Civil Procedure stipulates: *“If in the petitions, the litigators have written sufficiently and accurately the residential addresses of the defendants and/or the persons with relevant interests and duties but such persons change their residences regularly without notification to competent agencies/persons according to law regulations on residence to evade obligations towards the litigators, the Judges shall not return the lawsuit petitions but regard the defendants/persons with related interests and duties as purposely concealing their addresses and accept the petition and conduct settlement according to general procedures.”*

Point a, Clause 1, Article 5 of Resolution No. 04/2017/NQ-HDTP dated 5th May, 2017 guiding a number of provisions in Clauses 1 and 3, Article 192 of the Code of Civil Procedure No. 92/2015/QH13 on return the petition, the right to file a petition to re-initiate the **case (“Resolution No. 04/2017/NQ-HDTP”)** stipulating:

“The residential addresses of the defendants, the persons with relevant interests and duties” specified at Point e, Clause 1, Article 192 of the Code of Civil Procedure 2015 is determined as follows: If the person being sued, the persons with relevant interests and duties is a Vietnamese citizen or an oversea Vietnamese who is holding Vietnamese citizenship and returns to Vietnam to live, their place of residence is the lawful place of residence where the defendant, the person with related interests and duties permanently or temporarily resides or is currently living according to the provisions of the Residence Law”.

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Clause 2, Article 5 of Resolution No. 04/2017/NQ-HDTP stipulates:

“The petitioner has provided the address of the “place of residence, place of work, or place of headquarter” of the defendant, the person related with interests and duties to the Court in accordance with the provisions of law and instructions in Clause 1 of this Article at the time of filing a lawsuit petition, which is granted, certified by a competent agency or organization or has other grounds. If it is proved that it is the address of the defendant and the person with related interests and duties, the address of the defendant and the person with related interests and duties shall have been correctly recorded as prescribed in Point e Clause 1 of Article 192 of the Code of Civil Procedure 2015”.

Clause 1, Article 6 of Resolution No. 04/2017/NQ-HDTP stipulates:

“In case in the lawsuit petition, the plaintiff has fully and correctly recorded the address of the defendant and the person with related interests and duties. According to the guidance in Article 5 of this Resolution, the Court must receive the lawsuit petition and consider accepting the case according to general procedures”.

Pursuant to the above provisions, the Court must accept the case without requiring the plaintiff to provide additional documents verifying the residence of the defendant and the person with related interests and duties when the litigators have written sufficiently and accurately the residential addresses of the defendants and/or the persons with relevant interests and duties according to the address stated in the transaction or written contract.

In case after accepting the case but not serving the procedural documents, after verifying in the locality that they already left the residence place 6 months ago. This is determined to be the case where the defendant and the person with related rights and duties hide their address. The Court shall base itself on the provisions at Points a and b, Clause 2, Article 6 of Resolution No. 04/2017/NQ-HDTP to continue to settle the case according to general procedures and not issue a decision to suspend the settlement of the case.

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4. Regarding the jurisdiction of the Court

4.1. According to Official Letter No. 141/TANDTC-KHXX dated 21st September, 2011 of the Supreme People's Court on the competence to handle requests for return of the certificate of property ownership, the certificate of land use right are not valuable papers, if there is a request from the Court to force the occupier to return these papers, the Court will not accept the settlement. However, according to the provisions of Clause 2, Article 4 of the Code of Civil Procedure, "Courts must not refuse to settle a civil case for the reason that there is no applicable law provision for such case.". So, can the Court handle these cases?



Clause 8, Article 6 of the Law on the State Bank of Vietnam in 2010 stipulates:

"Valuable paper means a proof evidencing the debt-payment obligation of the issuer towards the owner in a certain duration under the interest payment condition and other conditions."

The Law on Negotiable Instruments 2005 stipulates that valuable papers are: bill of exchange, promissory note, cheque.

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Clause 16, Article 3 of the Land Law 2013 stipulates:

“Certificate of land use rights and ownership of houses and other land-attached assets is a legal certificate in which the State certifies the lawful land use rights and ownership of houses and land-attached assets of the person who has land use rights and ownership of houses and land-attached assets.”

Section 1 Part I Official Dispatch No. 02/GD-TANDTC dated 19th September, 2016 of the Supreme People’s Court answering a number of issues about administrative and civil procedures instructs:

“Certificate of land use right is an administrative decision; if falling into one of the cases specified in Clause 2, Article 3 of the Law on Administrative Procedures 2015”, they shall be the subject of an administrative lawsuit.”

Based on the above provisions, the certificate of land use right is an administrative decision, not a “proof of debt payment obligation”, so it is not a valuable document. Therefore, the guidance in Official Letter No. 141/TANDTC-KHXX determining that land use right certificates are not valuable papers are still consistent with the Civil Code 2015 and other laws in force.


In addition, Article 164 of the Civil Code 2015 stipulates:

“Each owner or holder of other property-related rights shall have the right to request a court or another competent authority to compel the person infringing upon their rights to return the property and terminate the acts of illegally obstructing the exercise of their ownership rights or other property-related rights, and to request compensation for any damage.”

Pursuant to this provision, if there is a request to the Court to force the occupier to return the certificate of land use rights, stop the act of obstructing the exercise of the land user’s rights, the People’s Court shall settlement according to the provisions of Clause 2, Article 26 of the Code of Civil Procedure.

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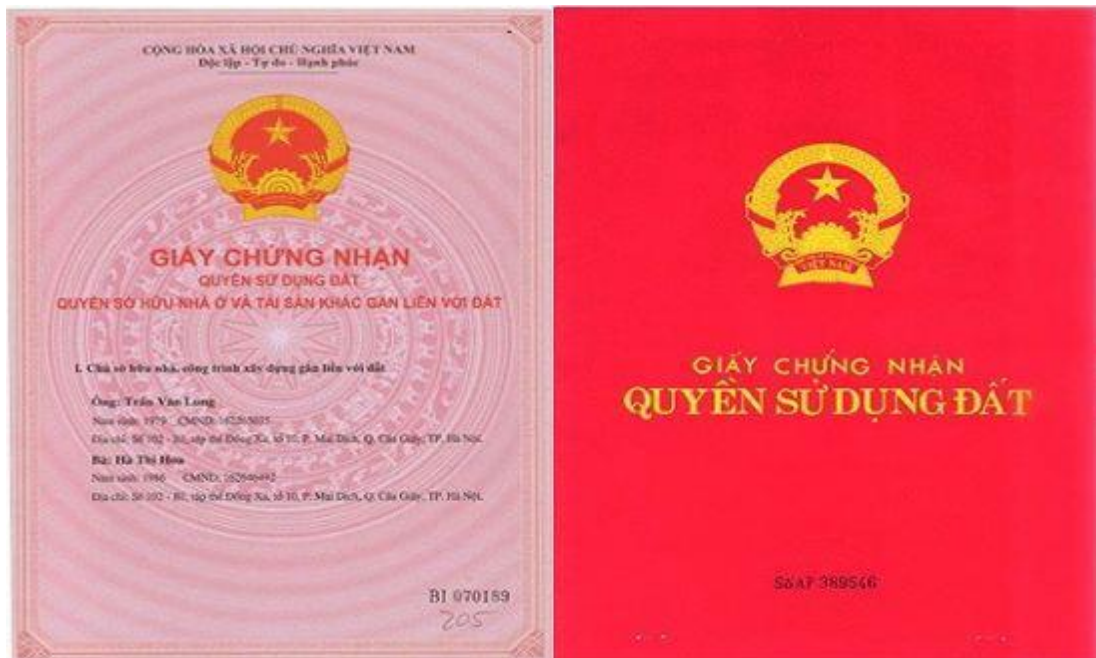


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4.2. Mr. D and Mr. E have two children, Mr. A and Mrs. B. Mr. A lives with Mr. D and Mr. E on the land area created by his parents but has not yet been granted a land use right certificate. When the State had the policy of granting a certificate of land use right under the Land Law 1993, Mr. A declared and registered the land use right and was granted a certificate of land use right by the People's Committee of district X; at that time, Mr. D and Mr. E were still alive and had no objections. After Mr. D and Mr. E passed away, Mrs. B filed a lawsuit asking for the division of the two's inheritance. So, the case falls under the jurisdiction of the People's Court of the district or the People's Court of the province?



Clause 5, Article 26 of the Code of Civil Procedure stipulates that civil disputes fall under the jurisdiction of the Court, including the competence to settle disputes over property inheritance.

Clause 1, Article 35 of the Code of Civil Procedure provides:

“1. People's Courts of districts shall have the jurisdiction to settle according to first-instance procedures the following disputes:

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- a) *Disputes over civil matters, marriage and family, prescribed in Articles 26 and 28 of this Code, except for disputes specified in Clause 7, Article 26 of this Code;*
- b) *Disputes over business/trade activities prescribed in clause 1 Article 30 of this Code;*
- c) *Labour disputes prescribed in Article 32 of this Code.”*

Pursuant to the above provisions, **in case the involved parties initiate a lawsuit requesting the division of the inheritance, without requesting the cancellation of the land use right certificate, the case falls under the jurisdiction of the district-level People’s Court.**

Article 34 of the the Code of Civil Procedure provides:

“1. When resolving civil cases, the Courts may revoke particular decisions of agencies or organizations or competent persons of such agencies or organizations in particular cases which are obviously unlawful, infringing upon the rights and legitimate interests of involved parties in these civil cases.


2. Particular decisions specified in clause 1 of this Article are decisions on particular matters that have been issued and applied once to one or a number of particular entities. If the civil cases are related to such decisions, they must be considered in such the same civil cases by the courts.

3. When considering repealing decisions specified in clause 1 of this Article, the Courts shall invite agencies, organizations or competent persons that have issued such decisions to participate in the procedures in the capacity as person with relevant interests and duties.

Agencies, organizations, competent persons who have issued the decisions must participate in the procedures and present their opinions about the particular decisions repealed by the courts.

4. Competence of Courts in charge of civil cases subject to considering the repealing of particular decisions specified in clause 1 of this Article shall be determined according to corresponding provisions in the Law on administrative procedures about competence of People’s Courts of districts/provinces.”

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Clause 4, Article 32 of the Law on Administrative Procedures stipulates that the provincial-level People's Courts have the competence to settle:

“Lawsuits over administrative decisions or acts of district-level People's Committees and district-level People's Committee chairpersons within the same administrative boundaries with the courts.”

Pursuant to the above provisions, **in case the involved parties request the division of the inheritance and at the same time request the cancellation of the land use right certificate, the case falls under the jurisdiction of the provincial-level People's Court.**

5. Regarding the summoning of litigants by the Court

In the process of settling disputes over contracts for the transfer of land use rights or contracts for the sale and purchase of assets, mortgages, etc. Does the court have to include a contract notarization practice organization to participate in the proceedings as the person with related interests and duties?

According to the provisions of Points d and g, Clause 2, Article 17 of the amended Law on Notarization 2018, notaries are obliged to explain to notarization requesters their lawful rights, obligations and interests, and legal significance and consequences of notarization; if refusing notarization requests, to clearly state the reasons to notarization requesters.

Article 38 of the amended Law on Notarization 2018 stipulates:

“1. Notarial practice organizations shall pay compensation for damage caused to notarization requesters and other organizations and individuals due to faults of their notaries or employees or interpreters being their collaborators in the process of notarization.

2. Notaries, employees or interpreters being collaborators who cause damage shall indemnify the notarial practice organization for the compensation amount already paid by this organization to the

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damage sufferer in accordance with law; in case they fail to indemnify such amount, the notarial practice organization may request a court to settle.”

Clause 4, Article 68 of the Code of Civil Procedure stipulates:

“The persons with related interests and/or obligations in civil lawsuits are those who neither initiate lawsuits nor are sued, but the resolution of the civil lawsuits is related to their interests and/or obligations and, therefore they themselves, or other involved parties, request to include them in the proceedings in the capacity as the persons with related interests and/or obligations and such requests are accepted by courts.

Where the resolution of a civil lawsuit is related to the interests and/or obligations of a person but no one requests to include him or her in the proceedings in the capacity as the persons with related interests and/or obligations, the Court shall have to include that person in the proceedings in the capacity as the person with related interests and/or obligations.”

Thus, based on the above provisions, depending on the case, the Court considers whether to bring a notarial practice organization to participate in the proceedings as a the person with related interests and duties. For the case where the settlement of a contract dispute is related to the notary’s obligation to explain according to the provisions of Point d, Clause 2, Article 17 of the amended Law on Notarization 2018, the responsibility to compensate for the notarization requester of a notarial practice organization, the Court shall consider including the notarial practice organization to participate in the proceedings as a person with related interests and obligations.

6. Regarding the plaintiff’s right to re-initiate the case

During the settlement of a civil case, if the plaintiff fails to pay the valuation expenses according to Point dd, Clause 1, Article 217 of the Code of Civil Procedure, the court shall issue a decision to terminate the settlement of the case. So, in this case, does the plaintiff have the right to re-initiate the case as if the plaintiff withdrew the lawsuit petition?

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Point dd, Clause 1, Article 217 of the Code of Civil Procedure stipulates:

“After accepting cases which fall within their respective jurisdiction, the Courts shall issue decisions to terminate the resolution of the civil lawsuits in the following circumstances:

...dd) Plaintiffs fail to advance the charges for property price appraisal and other procedural charges prescribed in the Code.”

Clause 1, Article 218 of the Code of Civil Procedure stipulates:

“When the decisions to terminate the resolution of civil lawsuits are issued, the involved parties shall not be entitled to initiate lawsuits to request the Courts to re-settle such civil lawsuits if the institution of the subsequent cases does not bring in any difference from the previous cases in terms of the plaintiff, defendant and the disputed legal relations, except for cases prescribed in clause 3 Article 192, point c clause 1 Article 217 of this Code and cases otherwise provided for by law...”

Thus, in case the Court issues a decision to stop the settlement of the civil case for the reason *“the Plaintiff does not pay an advance for asset valuation expenses and other procedural expenses”*, the plaintiff has no right to re-initiate a lawsuit to request the Court to continue handling the case as in the case of withdrawal of the petition.



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LEGAL DOCUMENTS 08/2021

NO.	EFFECTIVE DATE	NAME
BUSINESS - GOVERNMENT FINANCE		
1.	03/08/2021	Official Letter 1063/GSQL-GQ3 in 2021 publicizing the list of enterprises providing international express delivery services issued by the Customs Management Supervision Department
2.	13/08/2021	Resolution 16/NQ-HDND on support for clean water use in Hanoi in 2021 in the context of being affected by the COVID-19 pandemic
INFORMATION TECHNOLOGY		
3.	10/08/2021	Official Letter 3363/BGDĐT-GDDH in 2021 guiding the use of software to support enrollment in pedagogy issued by the Ministry of Education and Training
TRANSPORT		
4.	12/08/2021	Official Letter 8307/BGTVT-VT in 2021 on facilitating transportation of vaccines, supplies and equipment for Covid-19 vaccination issued by the Ministry of Transport
TRADE		
5.	11/08/2021	Official Letter 4843/BCT-TTTN in 2021 on petrol and oil business management issued by the Ministry of Industry and Trade
CRIMINAL LIABILITY, CULTURE - SOCIETY		
6.	16/08/2021	Plan 2725/KH-UBND on Population work activities in 2021 in Ho Chi Minh City

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NATURAL RESOURCES - ENVIRONMENT		
7.	18/08/2021	Official Letter 5687/VPCP-KGVX 2021 on management and handle of medical waste in pandemic prevention and control issued by the Government Office
SPORT - HEALTH		
8.	21/08/2021	Official Letter 8675/BGTVT-VT in 2021 on coordination in controlling the Covid-19 pandemic in provinces and cities issued by the Ministry of Transport
9.	21/08/2021	Decision 4042/QD-BYT in 2021, providing temporary guidance on the mobile medical station model in the context of the COVID-19 pandemic, issued by the Minister of Health
LEGAL SERVICES		
10.	13/08/2021	Official Letter 136/TANDTC-PC 2021 on further strengthening the development and application of case law in the People's Court issued by the Supreme People's Court

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