

# Outline of the Act Partially Amending the Judicial Scriveners Act and the Land and Building Investigators Act

Civil Affairs Bureau, Ministry of Justice

Enacted June 6, 2019; Promulgated June 12, 2019; Act No. 29 of 2019

## Current Situation

### Recent years have seen major changes in judicial scriveners' and land and building investigators' professional circumstances.

- For Example
- ✓ There have been considerable increases in judicial scriveners' involvement in representing clients in summary court litigation and in their involvement in adult guardianship/property management services.
  - ✓ Land and building investigators' active participation on a broad range of occasions has increased in areas such as client representation in alternative dispute resolution proceedings and preparation of maps stored at registry offices.
  - ✓ Specialists in both of these fields have been participating in initiatives such as responding to the problems of vacant houses and land with an unclear record for the owner and supporting reconstruction following natural disasters.



➔ **The increase in the scope of judicial scriveners' and land and building investigators' practices and the broadened scope of their activities makes it necessary to tackle the following issues with the systems for these professions.**

#### Issue 1

There is a need to make it clear what their missions are as specialists.

#### Issue 2

There is a need to further rationalize disciplinary proceedings in keeping with current circumstances.

#### Issue 3

There is a need to respond to a variety of needs by allowing judicial scriveners and land and building investigators to establish **one-person corporations**.

## Overview of the Amendment

This Act prescribes the necessary amendments to the Judicial Scriveners Act and the Land and Building Investigators Act in light of how circumstances have changed in recent years.

### 1 Clarifying the Missions of These Specialists

The amendment establishes provisions that clarify the missions of judicial scriveners and land and building investigators **as specialists**.

JS Act, Art. 1;  
LBI Act, Art. 1

\* How these provisions will appear:

#### ▶ Judicial Scriveners

"The mission of judicial scriveners is to protect the rights of the people as specialists in the registrations, deposits with official depositories, litigation, and other legal services that comprise their services pursuant to the Judicial Scriveners Act, and to thereby contribute to the formation of a free and fair society."

#### ▶ Land and Building Investigators

"The mission of land and building investigators is to contribute to clarifying rights related to real estate as specialists in registrations involving real estate descriptions and in services that involve clarifying parcel boundaries, and to thereby help stabilize and improve the lives of the people."



### 2 Ensuring Appropriate and Rational Disciplinary Proceedings

#### 2-1 Changing the person authorized to take disciplinary action to the Minister of Justice

The amendment changes the person authorized to take disciplinary action from the Director of the Legal Affairs Bureau or District Legal Affairs Bureau to the Minister of Justice.

法律官

→ This will allow for more appropriate and swifter disciplinary action to be implemented in a variety of cases, under the centralized direction of the Ministry of Justice.

JS Act, Art. 47; LBI Act, Art. 42

#### 2-2 Establishing a statute of limitations

The amendment establishes a system under which disciplinary proceedings will not be initiated once seven years have passed after the grounds for disciplinary action arise (a statute of limitations).

→ This will ease the burden in areas such as the prolonged preservation of defense-related materials.

JS Act, Art. 50-2; LBI Act, Art. 45-2

#### 2-3 Guarantying a hearing prior to disposition of admonition

The amendment requires that hearing proceedings also be held prior to a disposition of admonition.

→ Persons subject to disposition of admonition will have the full guarantee of a hearing, in light of the impact of a disposition of admonition. \* disposition of admonition: a disciplinary measure admonishing a person not to repeat the error they have made. This does not result in a suspension of services or anything similar.

JS Act, Art. 49(3);  
LBI Act, Art. 44(3)

#### 2-4 Enabling disciplinary action against a corporation whose liquidation has been completed while disciplinary proceedings are in progress

The amendment makes it possible to take disciplinary action against a corporation of judicial scriveners or a corporation of land and building investigators whose liquidation has been completed.

→ This will prevent such corporations from evading disciplinary action.

JS Act, Art. 48(2); LBI Act, Art. 43(2)

### 3 Enabling the Establishment of One-Person Corporations

The amendment makes it possible to establish corporations of judicial scriveners and corporations of land and building investigators that have one person as their members.

JS Act, Art. 44; LBI Act, Art. 39, et al.

→ This responds to a variety of needs in terms of corporate governance.



## \* Other Details

#### ▶ Effective Date

The amending Act comes into effect on the date specified by Cabinet Order, within a period of **one year and six months** from the date of promulgation.

#### ▶ Transitional Measures

- The **statutes of limitations under the new Acts also apply** to cases from before the time that the new Acts come into effect, if disciplinary proceedings have not begun as of the time the amending Act comes into effect.
- Corporations that have come to have a single member and been dissolved before the new Acts come into effect are **allowed to continue as corporations** for three years after their dissolution.

...and other measures

# 司法書士法及び土地家屋調査士法の一部を改正する法律の概要

法務省民事局

〔令和元年6月6日成立，令和元年6月12日公布，令和元年法律第29号〕

## 現状

### 近年，司法書士・土地家屋調査士を取り巻く状況が大きく変化

- （例）✓ 簡易裁判所における訴訟代理や成年後見・財産管理業務への司法書士の関与が大幅に増加
- ✓ ADR 手続における代理や登記所備付地図の作成等の分野において，土地家屋調査士の活躍の場が拡大
- ✓ 空家問題・所有者不明土地問題への対応，自然災害における復興支援等に，それぞれ専門家として参画



→ 業務範囲の拡大や活動範囲の広域化に伴い，司法書士・土地家屋調査士の制度について，以下の課題に対応する必要

**課題①** 専門家としての使命を明確にする必要

**課題②** 現状に即して，懲戒手続をより合理化する必要

**課題③** 一人法人を認めることによる多様なニーズへの対応が必要

## 改正の概要

近年の状況の変化を踏まえ，司法書士法・土地家屋調査士法について，所要の改正を行う。

### ① 使命の明確化

司法書士・土地家屋調査士について，**専門家としての使命を明らかにする規定を設ける。** 司1条・調1条

\* 規定のイメージ

#### ▶ 司法書士

「司法書士は，司法書士法の定めるところによりその業務とする登記，供託，訴訟その他の法律事務の専門家として，国民の権利を擁護し，もって自由かつ公正な社会の形成に寄与することを使命とする。」

#### ▶ 土地家屋調査士

「土地家屋調査士は，不動産の表示に関する登記及び土地の筆界を明らかにする業務の専門家として，不動産に関する権利の明確化に寄与し，もって国民生活の安定と向上に資することを使命とする。」



### ② 懲戒手続の適正・合理化

#### ②-1 懲戒権者を法務大臣に変更

懲戒権者を「法務局又は地方法務局長」から「法務大臣」に変更 司47条・調42条等  
→ 多様な事案について，法務大臣の一元的な指揮の下で，より適正・迅速な懲戒を実現

#### ②-2 除斥期間を新設

懲戒事由の発生から7年経過後は，懲戒手続を開始しない制度（除斥期間）を新設  
→ 防御のための長期にわたる資料保管等の負担を軽減 司50条の2・調45条の2

#### ②-3 戒告処分における聴聞を保障

戒告処分（※）においても聴聞手続を必須に  
→ 戒告処分の影響に鑑み，手続保障を充実（※）戒告処分：再びあやまちのないよう戒める処分。業務停止等の効果はない。 司49条3項・調44条3項

#### ②-4 懲戒手続中に清算が終了した法人への懲戒処分を可能に

清算が終了した司法書士法人・土地家屋調査士法人への懲戒を可能に 法務省  
→ 懲戒逃れを防止 司48条2項・調43条2項

### ③ 一人法人の可能化

**社員が一人の司法書士法人・土地家屋調査士法人の設立を可能とする。** 司44条・調39条等

→ 法人運営に関する多様なニーズに対応



### \* その他

#### ▶ 施行日

公布の日から起算して1年6月を超えない範囲において政令で定める日

#### ▶ 経過措置

- ・ 施行の際に懲戒手続が開始されていない場合には，新法施行前の事案にも，**新法の除斥期間を適用**
- ・ 新法施行前に社員が一人になって解散した法人についても，解散後3年以内は，**法人を継続することを許容** など