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Main Civil Code Amendments Concerning Real Estate

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The Civil Code of the Russian Federation has not undergone major revisions for more than 15 years. In that time, there have been fundamental changes to the economy and laws governing commercial activities. The need for amendments and updates to "the second most important law after the Constitution" has become obvious. These amendments are intended to improve the economy and investment climate in Russia.

On April 3, 2012, then-President Dmitry Medvedev introduced draft amendments to the Civil Code to the State Duma. The new Civil Code was approved in the first reading by the State Duma on April 27, 2012. The second and third readings are to take place by the end of the spring session (end of June).

The main amendments concerning real estate are the following:

- Mandatory notarization of real estate transactions.

The proposed involvement of notaries in business and mandatory notarization of real estate transactions will come into force only after the adoption of new legislation on notary activities, which will set out the notary function of verifying the lawfulness of such transactions as well as effective means of holding notaries liable for losses caused to the parties. At present, state notaries who commit an offense may be held to disciplinary, civil or criminal liability, depending on the severity of the offense. Notaries in private practice have full financial liability for their unlawful acts.

- Prohibition on separate disposal of land and buildings thereon, and vice versa.



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The Civil Code previously allowed both buildings without the underlying land plot and land plots separately from the buildings standing on them to be present in the civil cycle. The Land Code, on the contrary, set out the principle of the unity of land plots and the buildings standing thereon. The contradictory legal rules gave rise to differing interpretations and differences in approaches to real estate transactions. This contradiction was excluded by an amendment, according to which land and buildings standing on it that are owned by the same individual are treated in transactions as a single entity.

- Premises as a separate type of real estate.

The new Civil Code provides for premises as a separate form of immovable property. This kind of property exists after it has been duly separated from a building. While the current Civil Code previously recognized common shared ownership of premises in a building only for apartment owners in an apartment building, now all owners of premises (residential or non-residential) will have a share in the ownership of a building's common areas, including the underlying land plot.

- Neighbors' rights to a land plot.

When exercising their property rights, the owners of land plots must observe restrictions established for the benefit of neighbors ("neighbors' rights"). These restrictions are: erection of buildings or structures that by their existence or use have an impermissible effect on a neighboring land plot; planting of plants that cause the deterioration of a neighboring land plot or buildings and structures on it; performing earthworks on a land plot in such a way as to cause subsidence on a neighboring land plot; building a well that prevents water reaching a well on a neighboring land plot; laying sewage systems that cause contamination of a neighboring land plot, and such like. The amendment introduces "neighbors' rights"

for landowners of both adjoining and non-adjoining land plots.

- New forms of limited property rights.

The following limited property rights are introduced: (1) perpetual tenancy; (2) land plot development right; (3) personal usufruct; (4) preferential acquisition of immovable property; (4) pecuniary benefit; and (5) limited title of the owner of a building to the underlying land plot.

The 50-year land plot development right replaces the ex-lease of land for construction. Such land plot lease rights will be converted into ownership or development rights.

The right of limited possession of a land plot is temporary and should therefore be converted into a lease, development or perpetual tenancy right and therefore does not require state registration.

The preferential acquisition of immovable property right guarantees the holder the exclusive right to acquire the title to a property. The preferential acquisition rules also allow the acquisition of mortgage and development rights.

- New encumbrances over real estate.

Among the newly proposed encumbrances are personal usufruct (individual benefit) and pecuniary benefit (similar to rent).

The right of individual benefit (personal usufruct) — is a right to hold and use a thing that is provided by the owner of an immovable thing for payment, or gratuitously to a non-commercial organization or citizen (holder).

A pecuniary benefit may be created by a rent agreement or permanent maintenance agreement with a dependent. The holder of the pecuniary benefit may from time to time receive some provision from the property owner, which may be in the form of money, goods, work or services. The pecuniary benefit is created for the lifetime of the holder, but not more than 100 years.

- New mortgage form.

The non-accessory, transferable form of mortgage used in Europe is now being introduced into the Russian Civil Code. This kind of mortgage gives the creditor a significantly stronger legal position with respect to the obligation secured by the mortgage.

- Property right to subsoil, water bodies and forest land plots.

Substantial amendments to the nature and extent of ownership rights to subsoil, water bodies and forest land plots are intended to clarify regulation of these kinds of real estate.

As a whole, these progressive proposed real estate amendments are what the Russian business community has been waiting for. If introduced, Russian real estate law will finally meet Western standards.

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