

Granting a Permit After Construction Has Started

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In practice, many titleholders to land plots start constructing buildings and structures prior to receiving a construction permit. Indeed, an application and other documents required to receive a construction permit are filed when at least part of a building has already been constructed. Frequently, the time between the issuance of a construction permit and the issuance of a commissioning permit is only a couple of months. By operating in such a way, developers commit administrative offenses, but they do save time.

Do the competent authorities have the right to issue a construction permit after construction has already begun?

The absence of the necessary documents and/or nonconformity of those documents with the land plot development plan are the basis for being denied a construction permit. The Urban Planning Code of the Russian Federation does not stipulate completing construction without a permit as the basis for denying a construction permit. Therefore, it is possible to argue that a construction permit may be granted after construction has started. Even court practice supports this argument. The courts have indicated, in particular, the closed nature of the list of grounds for denying a construction permit, as well as the impossibility of denial based on a building having already been constructed.

In addition, the courts have expressed a contradictory position, particularly in instances when a construction permit is requested at the finishing stages of a project. These cases have been viewed as attempts to register structures illegally, and as a misuse of rights. This position, according to the author, contradicts the provisions of paragraph 3 of article 222 of the Civil Code of the Russian Federation, as well as the position of the Supreme Commercial Court of the Russian Federation, by which, under certain circumstances, a court may recognize the owner or leaseholder of a land plot as the owner of the buildings and structures constructed without proper permission on said plot.

If a court has the possibility of recognizing ownership rights to a building constructed without a construction permit, and if the construction has been completed without any substantial infringements of the rules and regulations of city construction, is not a threat to life or health, and does not infringe upon the interests of third parties, then it is unclear why it is not permitted to grant a construction permit after the fact, particularly since the law does not explicitly forbid this. Furthermore, granting a construction permit under such circumstances in no way relieves a developer from liability under the Administration Offense Code.

In conclusion, it is necessary once again to note that a developer who has begun construction without first having obtained the proper permit is violating the law. However, when applying for a construction permit, a developer may refer to the fact that starting construction without first having received a permit is not stipulated in the law as a basis for denying a construction permit. At the same time, the courts do not always follow this argument; therefore, construction without the necessary permit is not only an offense, it is also a serious financial risk, particularly if an application is filed for a construction permit in the finishing stages of a project.

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