

B2B: Registration of Rights to Real Estate in Russia

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The Russian system of registration of rights to real estate is currently undergoing interesting changes, which affect not only the substance of the registration system itself but also technical aspects aimed at facilitating and speeding up the process of registering rights to real estate.

A new concept?

Since 1997, the core of the Russian registration system has been the so-called "entry principle," meaning that rights to real estate arise and are transferred only when a relevant entry is made in a specialized register (the Unified State Register of Real Estate Rights and Related Transactions, or EGRP). For example, the buyer under a real estate purchase agreement becomes the lawful owner not after paying the purchase price, and not even after taking actual possession, but only after information about the title holder has been updated in the EGRP.

However, elements of a different principle for structuring the registration system have gradually been making their way into the Russian legal system: the "principle of opposability." According to this principle, registration is nothing more than a way of notifying third parties that an origination or transfer of rights has occurred, whereas the rights themselves arise (or are transferred) as a result of the creation of real estate assets and the conclusion of transactions. Thus, an entry in the register is needed only so that a right that has already arisen becomes "opposable" to third parties—i.e., so they can treat the person indicated in the register as the owner.



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How is the principle of opposability used in Russia?

It first began to be applied only to lease agreements. In 2013, the Supreme Commercial Court of the Russian Federation clarified in one of its rulings that a real estate lease agreement that has not undergone state registration cannot be "opposable" to third parties (for example, the tenant under such an agreement will not have a priority right to lease the property for a new term), but the agreement will be regarded as concluded for, and its provisions as binding on, the parties to the agreement.

Then, in June of this year, the Supreme Court of the Russian Federation expanded the scope of the principle, effectively turning it into a general rule. Now the parties to any transaction for the acquisition of rights to real estate are barred in their relations with each other from referring in bad faith to the lack of an entry in the EGRP concerning the transferred rights. As things now stand, once an agreement is made, for its parties the title has already passed and the owner of the property has changed, while for third parties nothing has changed — the owner remains the person reflected in the EGRP.

As we see, the entry principle customary in Russian real estate transactions is actively losing ground to the principle of opposability, which may have both positive and negative effects for parties to commercial transactions. While the new rules of the game are already conventional for lease agreements, a final evaluation of the expanded application of the principle of opposability will be possible only after the formation of a sufficient body of court decisions applying the new interpretation formulated by the Supreme Court.

New law on registration

As for technical changes, a new law on real estate registration was adopted in July that introduces certain changes to the system of cadastral recording and registration of rights to real estate. Although the new law, by and large, is simply a technical compilation of existing regulatory legal acts, it nonetheless contains a number of significant innovations.

Key provisions of the law:

- it introduces a unified state register of real estate (EGRN) that will combine the EGRP and state real estate cadastre (GKN) that exist today;
- rights that arise by operation of law will be registered without an application from the owner or acquirer of the rights on the basis of data received through information exchange (for example, cadastral recording and registration of rights to a newly built facility will be performed automatically on the basis of an application from the body that issued the commissioning permit for the facility);
- the list of documents that an applicant is required to submit to the Federal Service for State Registration, Cadastre and Cartography (Rosreestr) when registering rights to real estate is being reduced (for example, when legal entities apply for registration, Rosreestr will itself request their constituent documents from the Federal Tax Service);
- it will be possible to file an application for cadastral recording of a real estate property with any division of Rosreestr, regardless of where the property is located (previously applications could be filed only in the same Russian federal region); and
- registration processing times are being significantly reduced — to (a) 5 days for cadastral recording; (b) 7 days for registration of rights to real estate; and (c) 10 days for simultaneous cadastral recording and registration of rights.

The new law takes full effect on January 1, 2017.

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