

UKRAINE: REAL ESTATE LAW IN FOCUS

JANUARY 2020



LEGISLATION NOVELTIES: WHAT WE FACE IN 2020

The end of 2019 was marked with abundant novelties in the field of real estate and construction introduced by our lawmakers. For your attention this brief flashback to the recent amendments that will be mostly implemented in the new year.

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On December 01, 2019 the Law of Ukraine On Amendments to Certain Legislative Acts Regarding Improvement of Providing of Administrative Services in the Field of Construction and Launching of the Unified Public Online System in the Field of Construction (Law No. 199-IX) was brought into force.

The Law provides the number of novelties aimed to simplify the use of administrative services related to construction as well as to mitigate possible corruption risks.

PUBLIC ONLINE SYSTEM

Due to the new Law the Unified Public Online System in the Field of Construction (Online System) will be launched step by step within 2020-2021 and will include the following sections: the Registry of Construction Works, user account and web portal. The Online System also includes the Registry of documents that permit preliminary and construction works, certify commissioning of constructed buildings as well as provide information on return for revision, renouncement or cancellation of the above documents.

Starting from January 01, 2020 a user may submit and get online documents related to licensing of construction business (by constructing buildings of CC2 and CC3 categories), obtaining construction passports, so called initial data (town planning conditions and restrictions and technical conditions), preliminary and construction works, commissioning of constructed buildings, assignment, change, adjustment or cancellation of address.

Users get the right to check the status of their submitted applications online as well as notify on illegal constructions or appeal against decisions of licensing authority or experts. Also a constant unique ID will be assigned to each separate construction site to be specified in all related documents.

The access to the Online System will be free for all.

Also on January 01, 2020 the Online cabinet of a developer was launched thus applications on preparatory and construction works, obtaining construction permits, construction licenses as well as commissioning certificates may be submitted online.

Moreover, the new Law regulates the assignment or amendment of address of real property, sets the order of getting construction permits. It also

specifies the cases when the technical inventory of real property is required.

STATE ARCHITECTURAL AND CONSTRUCTION INSPECTION: LESS POWERS

The new Law also reduces the powers of the State Architectural and Construction Inspection (Inspection). Particularly starting from June 01, 2020 the right on preparatory construction works and right to start constructions works acquired due to submitted notifications as well as construction permits may be cancelled by the Inspection only:

- in case a developer has waived such a right;
- in case a developer – legal entity is liquidated;
- due to the relevant court decisions which has gained legal force.

Town planning conditions and restrictions may be cancelled under the relevant developer's application or due to the court decision.

Registration of commissioning declaration may be cancelled only under the relevant court decision.

Thus the Inspection has lost the right to cancel the above documents at its own discretion and shall file a lawsuit in case it will reveal any construction violation.

PROTECTION OF PROPERTY RIGHTS BECOMES MORE EFFECTIVE

On November 02, 2019 the Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on Protection of Property Rights came into force. Besides the Law introduced some novelties it also has amended the Law of Ukraine On State Registration of Titles to Real Property, particularly:

- notary certification and state registration of titles to real property, unfinished construction shall be arranged simultaneously;
- a state registrar who has accepted an application on any registration action shall inform immediately the owner of real property (tenant, mortgagee) on such application;
- now any notary may register title to real property by certifying agreement that provides condition precedent or in case a new real property appears after a notary action. The title is to be registered after the case under the condition precedent has occurred or a new real property has appeared.

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Also on January 16, 2020 the Law of Ukraine On Amendments to Some Legislative Acts of Ukraine On Counteracting Raiding came into force. The Law particularly has introduced amendments that prevent:

- illegal land acquisition, including double registration of leases of land plots used by agricultural enterprises;
- seizure of property owned by agricultural enterprises (eg. buildings, agricultural machinery, crops and other assets);
- suspension of agricultural business as a result of unreasonable asset seizure, illegal acquisition of corporate rights (shares).

TRUST OWNERSHIP AS A WAY TO SECURE THE LOAN

The Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding Investment Incentives in Ukraine (No. 1059 dated 20.09.2019) has introduced the novelty into the Civil and the Land Codes of Ukraine – the trust ownership.

According to amended Art. 597¹ of the Civil Code of Ukraine under the trust ownership agreement the one party (trusted founder) passes the property to another party (trusted owner) under the trust ownership to secure debtor's obligation under the loan agreement.

Thus a trust ownership is a separate type of ownership aimed to secure obligation according to which a creditor who gets the property does not have the right to alienate this property unless to foreclose it in case of breach of obligation.

By transferring property into trust ownership the owner's title is terminated. An agreement on trust ownership is subject to notary certification and this ownership becomes effective from the moment of state registration.

According to amended Art. 89¹ of the Land Code of Ukraine a trusted owner gets all landlord's rights and obligations under the valid lease, emphyteusis or easement agreements. A trusted owner may also lease the land plot to other persons considering:

- the lease term will be terminated when the land plot will be foreclosed;
- a land user may not construct or mine on the land plot.

At the same time a trusted owner may not divide or unite land plots, approve land planning documents,

amend the land plot use purpose, alienate it for public use without the relevant prior trusted founder's consent.

The foreclosure procedure has also its features. Particularly the property may be alienated by the trusted owner to any third person and the minimum sale price may be set solely by the trusted owner.

It should be noted the introduced mechanism may result to some shadow schemes related to sale of real property at a lower price, fictitious termination of titles and the broad number of possible new owners who could acquire the title due to this mechanism. This issues seems particularly vague in view of possible introduction of land market in Ukraine.

LAND MORATORIUM

Last year Ukrainian parliament adopted in its first reading a draft bill aimed at removing a moratorium on selling agricultural land.

The proposed draft bill provides restriction that one single buyer could not purchase more than 10 thousand hectares of the entire agricultural land in Ukraine. It is also expected the question of whether foreign nationals or companies without foreigners among their founders would be allowed to buy agricultural land would be put to a referendum. It should be noted for the moment the bill only allows foreigners to inherit property which must be sold within a year.

Due to public outcry it is expected the second reading will be held in February.

Should you have any questions with respect to above or require any additional information, please do not hesitate to contact Mr. Vladyslav Kysil (v.kysil@kpdconsulting.com.ua) or Mr. Mykhailo Semka (m.semka@kpdconsulting.com.ua). We will be pleased to assist You.

The information contained in this overview is not intended to provide legal advice and should not be relied on or treated as a substitute for specific advice concerning individual situations.