

The Brief

January 2013

Russia - Real Estate and Construction Legislation

Review of 2012

Editorial

Between 1 January 2012 and 31 December 2012, a number of significant amendments were introduced into Russian real estate legislation. Among them the following chief improvements can be highlighted:

- On 31 March 2012 the RF Government adopted a series of Resolutions regarding the performance of expert evaluation of project documentation. In particular it is now executed in cases where it is not obligatory, but where the applicant has made a decision to submit the project documentation and/or the results of engineering surveys for such expert evaluation.
- Federal Law No. 96-FZ dated 29 June 2012 amended the federal legislation due to the establishment of new boundaries of the city of Moscow. As a result of this, the City of Moscow has the pre-emptive right to purchase agricultural land plots converted to urban land as a result of the change to the Moscow city boundaries, until 1 January 2025.
- RF SAC Plenum prepared the draft Decree "On Amendments to Resolution No. 73 dated 17 November 2011 of the Supreme Arbitrazh (Commercial) Court Plenum of the Russian Federation "On Certain Issues of the Application of Leasing-Related Provisions of the Civil Code of the Russian Federation ".



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AMENDMENTS TO LAND LEGISLATION

Evidence of the Non-Use of Land Plots.

RF Government Resolution No. 369 dated 23 April 2012 "On Evidence of the Non-Use of Land Plots, Taking into Account the Special Features of Agricultural Production or the Performance of Other Activity Related to Agricultural Production in the Constituent Subjects of the Russian Federation" specifies the list of evidence of the non-use of land plots for agricultural production or the performance of other activity related to this production. They are applicable on the territory of the constituent subjects of the Russian Federation, taking into account the regional specialization of agricultural production. In particular, the non-use of lands plots is determined by the following characteristics:

- No work for soil cultivation or growth of crops is performed on plough land.
- Perennial plants are not tended or harvested.
- No grazing of livestock takes place in pastures.

Having at least one of these characteristics, an agricultural land plot can be forcibly confiscated from its owner through court proceedings (in cases where it has not been used for at least three consecutive years).

Differential rent under the Heritage site leasing agreement

On 1 January 2013 the RF Government Resolution No. 1005 of 4 October 2012 "On the Adoption of the Regulation of Differential Rent and Its Amounts for Legal and Natural Entities Leasing Federally Owned Heritage Sites (Monuments of History and Culture) of the Peoples of the Russian Federation, Having Invested in Their Conservation and Having Provided for the fulfillment of These Works" comes into force. This Resolution stipulates the differential rent for legal and natural entities leasing federally owned heritage sites, which have also invested in their conservation.

The decision on the regulation of differential rent is adopted by the Federal State Unitary Enterprise, the Federal State Institution and the Federal Agency for State Property Management (regarding the property of the Federal treasury) who are the lessors under the Heritage site leasing agreement.

The differential rent is not applied in the following cases:

- The lessee has debt payments to be made to the federal budget, stipulated by the leasing agreement of the relevant heritage site.
- The fulfillment of works on the conservation of the heritage site is a result of the lessee's non-compliance with the conservation obligations.

Amendments to laws due to the change of the boundaries of the city of Moscow

According to Federal Law No. 96-FZ dated 29 June 2012 "On Amendments to Certain Legislative Acts of the Russian Federation" the federal City of Moscow has the pre-emptive right to purchase agricultural land plots converted to urban land as a result of the change to the Moscow city boundaries until 1 January 2025.

AMENDMENTS TO URBAN DEVELOPMENT LEGISLATION

Provision on the performing expert evaluations of project documentation.

On 31 March 2012 the RF Government adopted a series of Resolutions (No. 270, 271 and 272) regarding the performance of expert evaluation of project documentation.

The RF Government Resolution No. 270 amends its Resolution No. 145 dated 5 March 2007 "On the Provision on Organising and Performing State Expert Evaluations of Project Documents and Engineering Survey Results", according to which:

- The terms of the state expert's performance of evaluation of the project documentation are stipulated. In particular regarding cases when it is not obligatory, but the applicant has made a decision to submit project documentation and/or the results of engineering surveys for such expert evaluation.
- The period for the carrying out of expert evaluation has been reduced from 3 months to 60 days.
- The documents for the carrying out of expert evaluation may be submitted in paper or electronic format. Electronic documents submitted for such a purpose are to be signed using an encrypted digital signature.

The RF Government Resolution No. 272 "On the Approval of the Provision on Performing Non-State Expert Evaluation of Project Documents and Engineering Survey Results" stipulates the following provisions:

- The non-state expert evaluation is performed by accredited legal entities.
- The expert organizations are not entitled to perform the non-state expert evaluation if the stated expert organizations were involved in the preparing of the project documentation and/or implementation of engineering surveys.
- The non-state expert evaluation may be performed when it is not obligatory, when the applicant has merely made a decision for it to be performed.
- The expert evaluation is performed on the basis of an agreement in which the procedure for the submission of documents and removal of comments, the duration of the expert evaluation and the fee for its performance are determined.

JUDICIAL PRACTICE

The Supreme Arbitrazh Court of the Russian Federation prepared the **draft** Ruling "On Amendments to Be Introduced to Ruling No. 73 of the Supreme Arbitrazh Court's Plenum dated 17 November 2011 "On Particular Issues Arising from the Practical Application of Lease-Related Provisions of the Russian Civil Code".

The Draft Ruling explains, in particular, the following issues:

- Conditions and procedure for entering into a lease agreement for a new term with a former tenant, without competitive bidding, in respect of state and municipal property (in accordance with Article 17.1 of the Competition Law).



- Issues relating to persons entitled to lease out immovable property. Thus, a person will be deemed entitled to enter into a lease agreement, if such person was not the owner of the leased immovable property as of the date of conclusion thereof but had the title to such property as of the date of transfer of the immovable property to the tenant. The lease of immovable property by a legal owner which has not yet registered its title to such property, or has not obtained the commissioning permit for a capital construction project, will be deemed legal as well.
- Issues relating to the lease of a part of immovable property.

The Presidium of the Supreme Arbitrazh Court of the Russian Federation adopted **Ruling No. 5081/12 dated 18.09.2012** which explains that the rent under a land plot lease agreement may be divided in two parts: (1) a lump sum and (2) a regular rent, as Article 614 of the Civil Code of the Russian Federation does not prohibit the rent amount from being determined in such a manner.

Before the adoption of the Ruling, the issue relating to the validity of a tenant's obligation to pay a lump sum when entering into a lease agreement as "preliminary approval of the location of the property" was uncertain.

The Presidium of the Supreme Arbitrazh Court of the Russian Federation adopted **Ruling No. 5128/12 dated 25.09.2012** which states that Federal Law No. 94-FZ dated 21.07.2005 "On Placement of Orders to Supply

Goods, Carry out Works and Render Services for Meeting State and Municipal Needs" is not applicable for relations concerning the purchase of immovable property for state or municipal ownership.

Previously, the issue relating to the possibility to apply regulation in respect of public purchasing to the sale and purchase of immovable property was not clarified.

The Presidium of the Supreme Arbitrazh Court of the Russian Federation formulated a number of important legal views in **Ruling No. 13016/11 dated 29.05.2012** in respect of cases related to the modification of the type of authorized use of a land plot, in particular:

- No auxiliary type of authorized use specified in the urban planning regulations of the Rules for Land Use and Construction may be selected by an entity as the main and unique type. If an entry is made into the cadastre of immovable property in respect of an auxiliary type of authorized use as the second and subsequent types of use, the cadastral value calculation of a land plot which has a number of types of authorized use will be carried out based on the type which obtains the highest indicator values.
- The type of authorized use of any land plot may be modified only subject to a change in its actual use. If the actual use of a land plot remains unchanged (i.e. proof of the use of the land plot for other purposes is unavailable), the change in the authorized use of the land plot is prohibited.



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