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Joint co-ownership of residential legal estate.pdf

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Joint co-ownership of residential legal estate in land in Russia: Tenancy in common and partition of property[1].

An Abstract

by Pavel Kulikov

The article treats and substantiates some of the complexities of what partition of property in tenancy in common is in Russia.

Division, in technical sense of this word, of real property between co-owners is still considered as one of the most complex issues in rights in rem and of a paramount importance in judicial thoughts all over the world [2]. More or less, it's fair to say that the same generally accepted rules are to work for the owners of a condominium, where a unit owner acquires an interest in the common property, such as lawns, side works, parking lots and roadways. As a general practice, an owner could not dispose an interest in the common property separately from a deed conveying. Still, what will be the right advise for a company willing to obtain a title for residential legal estate in land under specific conditions? Some of the issues considered are:

Apportionment of residential legal estate in land

In case of doing business in the capital, - in Moscow, one should take into account not only the federal legislation pertinent to the issue, but also to consider local normative acts of Moscow government [3]. Also, effective from the date of 01 March 2015, allocation of residential legal estate in land is provided solely on the basis of land survey [4]. In accordance to the Civil Code of the RF, residential legal estate in land, when tenancy in common, could be apportioned in accordance to a mutual agreement entered into by the parties. The main difficulties, though, are: technical features allowing free residential passage, access to common areas and legal status of

each residential building and, subsequently, legal estate in land.

Formation of the residential legal estate

In accordance to the federal legislation, formation of the residential legal estate in land is the prerogative of the state authorities or municipal (local) governments. Also, it is important to mention the following: If formation of the land plot had been conducted after the effective date of 01.03.2005, it would have been deemed as tenancy in common only if due state registration procedure of the land plot has been followed.

Land Transaction Returns

There is no land transaction returns, as regulated by Russian law.

Partition and CPC

In case of court hearings, the claimant should take all necessary precautions for technical justifications for partition to be presented to the judge, in accordance to art. 60 of Civil Procedure Code (CPC).

[1] In many European countries, a tenancy in common can only exist in equity. This means that in law legal entities entitled to be joint tenants and also to be tenants in common in the conveyance deed.

[2] See, in particular (USA): Meacham v. Meaciam, 91 Tenu. 532, 19 S. W. 757; Iludgins v. Sansoin, 72 Tex. 229, 10 S. W. 104.

[3] These questions are regulated, in particular, by the following legislation: art.art. 35,36 of Land Code of the RF; chapter 17 of Civil Code of the RF; and the laws of the city of Moscow: «On Land Use and Building» No27 as from 14 May 2003, «On Fundamentals of Paid Land Use in the city of Moscow» No34 as from 16 July 1997, Moscow Government decree of 27.07.2004 No 522-PP «On value assessment procedure of state-owned land plots...».

[4]Subpara.4.par.3 art.11.3 of Land Code of the RF.