

DETERMINING THE LEGAL FATE OF LAND RIGHTS WHEN REAL ESTATE IS SOLD

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Annotatsiya: *Ushbu maqolada bozor iqtisodiyoti sharoitida ko'chmas mulk sotilganda yer uchastkasiga bo'lgan huquqning taqdiri uni rasmiylashtirish va davlat ro'yxatidan o'tkazish tartiblari, ko'chmas mol-mulklarni sotish bilan bog'liq munosabatlarni huquqiy tartibga solish masalalari va tegishli rasmiylashtirish orqali amalga oshirilishi, bugungi kunda ham ko'chmas mulk nafaqat inson uchun boshpana va asosiy mol-mulk balki, tadbirkorlik faoliyatini amalga oshirishning asosiy ob'ekti, tadbirkorning yuridik manzilini belgilash joyi vazifasini bajarilishi haqida masalalar atroflicha tahlil etilgan.*

Kalit so'zlar: *Ko'chmas mulk, yer uchastkasi, mulkdor, mulk huquqi, xususiy mulk, egalik qilish, foydalanish, tasarruf qilish.*

ABSTRACT

In this article, the fate of the right to land in the sale of real estate in a market economy is determined by the procedures for its registration and state registration, the legal regulation of relations related to the sale of real estate and the relevant registration. Even today, real estate is not only a shelter and basic property for a person, but also the main object of entrepreneurial activity, the place of determination of the legal address of the entrepreneur.

Keywords: Real estate, land, owner, property rights, private property, possession, use, disposal.

АННОТАЦИЯ

В данной статье судьба права на земельный участок при купле-продаже недвижимого имущества в условиях рыночной экономики определяется порядком его оформления и государственной регистрации, правовым регулированием отношений, связанных с куплей-продажей недвижимого имущества и соответствующей регистрацией. сегодня недвижимое имущество является не только жильем и основным имуществом человека, но и основным объектом предпринимательской деятельности, местом определения юридического адреса предпринимателя.

Ключевые слова: недвижимость, земельный участок, собственник, право собственности, частная собственность, владение, пользование, распоряжение.

Introduction. In a market economy, real estate holds a unique and significant place as one of the most important types of property. Due to its intrinsic value and necessity for individuals, real estate is regarded as more valuable and reliable than other forms of property, serving as a dependable foundation for ownership.

It is worth emphasizing that one of the primary factors contributing to the recent global financial crisis was the violation of regulatory frameworks governing real estate and mortgage lending practices. These violations led to a worldwide crisis in the banking and financial systems, resulting in a noticeable decline in real estate prices.

Nevertheless, it is a well-acknowledged fact that such circumstances do not diminish the importance or value of real estate for individuals. Consequently, the legal

regulation of transactions related to the sale of real estate has become increasingly pertinent in today's context.

The sale and purchase agreement for real estate has historically served as a pivotal legal transaction. Real estate occupies a central role in economic relations, with its formalization traditionally carried out through state registration. Even today, real estate serves not only as essential shelter and primary property for individuals but also as a critical asset for entrepreneurial activities, functioning as the legal address and operational foundation for business enterprises.

It should be recognized that real estate is invariably intertwined with land plots, and it is impossible to conceptualize this category of property as separate from the land.

Analyzing the intrinsic connection between real estate objects and land, Y.B. Saipova points out that, generally speaking, the characteristics of real estate as objects of civil rights have been repeatedly noted in the literature. The unique nature of these objects is interpreted through two dimensions: legal and material. Material characteristics pertain to the natural properties of real estate, including:

- its inherent connection to the land,
- immovability,
- irreplaceability,
- durability,
- permanence,
- fundamental nature,
- and individual designation.

Legal interconnection, in simplified terms, is interpreted as the congruence (or "coexistence") of property rights regarding the land plot and the structures situated on it. From a classical perspective, such an interrelation—where a building is considered to belong to the land plot—is indeed necessary and recognized.

Legal literature also emphasizes the connection between real estate and land while simultaneously noting that the subject of legal relations may consist of two types of real estate objects: the land plot and the building or structure located on it. This understanding has led to the development of several theories regarding the classification of real estate objects.

The First Theory (proposed by K.P. Pobedonossev, Y.V. Vaskovsky, and Y.S. Gambarov) recognizes real estate as objects inherently and firmly connected to land.

The Second Theory (advocated by G.F. Shershenevich, K.I. Malishev, and I. Fransesson) argues that the rights to a structure are derived from its legal connection to the land plot on which it is located. Under this theory, temporary constructions and structures erected on someone else's land cannot be recognized as real estate.

The Third Theory (put forth by A.E. Vorms, V.B. Yelyashevich, and A. Dumashevsky) posits that structures built on another person's land are considered movable property from the perspective of obligation law, whereas objects built on a land plot with property rights are regarded as immovable property under real estate law.

For instance, in the current civil legislation of Uzbekistan, the legal status of real estate is determined based on the second theory. Real estate is regulated in civil transactions with reference to its legal connection to the land plot on which it is situated. At the same time, property rights regarding a building or structure classified

as real estate and property rights regarding the land plot it occupies may be addressed separately.

It is worth noting that, today, the land plots on which real estate is situated hold a significant position in our country.

For this reason, the government's attention to the land plots on which real estate is located has become particularly important today. As evidence of this, the Decree of the President of the Republic of Uzbekistan on the "Privatization of Land Plots Occupied by Buildings and Structures of Legal Entities and Citizens" can be highlighted.

According to the decree, starting from January 1, 2007, legal entities (residents) of the Republic of Uzbekistan gained the right to privatize land plots on which their buildings, structures, and infrastructure objects are located, as well as adjacent land plots, taking into account technological processes, urban planning norms, and regulations, necessary for carrying out production activities. The most important aspect is that the privatization of land plots should be based on market value, and property rights are formalized in accordance with the procedure established by law, on a voluntary basis.

Furthermore, starting from January 1, 2008, citizens of the Republic of Uzbekistan (residents) were granted the right to privatize land plots allocated for individual housing construction and services for residential buildings.

Another important aspect from the perspective of civil law is that the privatized land plots may be freely traded (bought, sold, exchanged, donated, inherited, leased, etc.) and used as collateral, including for obtaining loans from banks and other credit institutions.

Indeed, the transition of land plots on which real estate is located from state ownership to private ownership is one of the necessary conditions for modern civil transactions today. Therefore, in transactions involving real estate, land plots are also involved as part of the object of the transaction along with the real estate itself. Specifically, when real estate is sold, the land plot on which it is situated also transfers from the seller to the buyer as an integral part of the real estate.

Given this, privatizing the land plots on which real estate is located can be regarded as a necessary measure, in line with the requirements of a market economy and contemporary civil relations.

As previously mentioned, real estate primarily consists of land plots and objects that are intrinsically connected to them. When real estate objects are sold, it leads to changes in the legal relationship concerning the land plot on which they are located.

In transactions involving the sale of real estate, the owner may either retain ownership of the land plot or sell it to a third party instead of the person purchasing the real estate. However, this situation must not impede the exercise of property rights over the real estate acquired by the buyer. Otherwise, the principles of property law may be violated, which is why a special provision has been established in civil legislation. According to this provision, when a building, structure, or other real estate is sold, the rights to a specific part of the land plot on which the real estate is located and which is necessary for its use are transferred to the buyer at the same time as the ownership of the real estate (Article 482, Part 1 of the Civil Code).

This applies not only to the land plot on which the real estate is located but also to the necessary areas for its use, such as the pathway leading to the building. It is well

known that, with exceptions outlined in Article 18 of the Land Code, land is not subject to sale. Land is considered state property and may only be allocated for use.

The property rights to land differ from the property rights to real estate built on the land. For example, if the ownership of a garden belongs to a certain individual, the ownership of the land on which the garden is located remains with the state. The owner of the garden is considered the user of the land plot. Therefore, when the garden is sold, the property rights to the garden and the right to use the land plot on which it is located are transferred to the buyer.

In developed foreign countries, there is strict monitoring of the intended use of property and land plots by owners, ensuring that they align with the legal regime. For example, under the Civil Code of France, if landowners fail to use their land appropriately, leading to soil degradation or harm to societal interests, the state may confiscate the land.

The phrase "the right to a certain part of the land plot" refers not to any type of legal right, but rather specifically to the right to use a part of the land plot that is necessary for the intended use of the real estate, as established for the real property.

For example, when a warehouse is purchased through a real estate sales agreement, but the property rights to the land plot on which the warehouse is located remain with the seller, the buyer gains the right to use the land necessary for bringing goods into the warehouse and utilizing the required equipment. The "certain part of the land plot necessary for the use of real estate" is identified based on the relevant cadastral documents. However, in practice, determining this specific area can be challenging, as cadastral documents typically distinguish between the land occupied by

the building or structure (and the area beneath the building) and the total area of the land plot, but do not indicate the portion of the land plot needed for the real estate's use. As a result, disputes may arise between the parties involved in the contract.

In our opinion, the "necessary part of the land plot" should be determined by the court based on the characteristics of the real estate object. In this case, the court should determine the necessary portion of the land plot for using the real estate based on a report prepared by a cadastral expert. This determination is typically made through mutual agreement between the parties or, if needed, by appealing to the state cadastral organization.

The fate of the rights related to the land plot that should be transferred to the buyer is expressed in Article 482 of the Civil Code. According to the second part of this article, if the seller is the owner of the land plot on which the real estate is located, the buyer is entitled to the corresponding part of the land plot, either through property rights, lease rights, or other rights outlined in the real estate sales agreement.

Despite the adoption of the Presidential Decree of the Republic of Uzbekistan "On the Privatization of Land Plots Occupied by Buildings and Structures of Legal Entities and Citizens," civil and land legislation have not yet established a rule granting property rights over land plots to citizens and legal entities. Thus, the provision in Article 482(2) of the Civil Code stating that "property rights over the land plot can be granted to the buyer" lacks a legal basis. Therefore, it is advisable to replace the term "property rights" with "property rights" in this provision. Such a change would align with the property rights outlined in Article 165 of the Civil Code, which includes rights related to agricultural management, operational management,

inheritance of land, and permanent or temporary use rights as defined in the Land Code.

Rights on Land Plots: Lease, Sale, and Servitude

According to Articles 3-4 of Article 24 of the Land Code, leased land plots cannot be objects of sale, mortgage, gift, or exchange. The right to lease a land plot can be pledged as collateral for loans. A lessee can only pledge their lease rights to the land plot without the lessor's consent in cases specified by law or in the lease agreement.

The conditions and terms of land plot leases are determined by the agreement between the parties and must be formalized in the contract. In cases where a person purchases real estate, the lease agreement for the land plot where the property is located must be in writing and properly formalized. If the parties are business entities, the lease agreement for the land plot that arises from the sale of real estate must be written and registered with the state. However, when it comes to individuals, the situation is different, and the lease agreement is not always properly formalized.

According to Parts 1-2 of Article 539 of the Civil Code, if a real estate lease agreement is for a period longer than one year and one of the parties is a legal entity, the agreement must be in writing. The lease agreement must be registered with the state.

The free use agreement for the land plot that arises from the sale of real estate is considered a separate agreement, and the provisions of the Civil Code on "Free Use" (Chapter 36, Articles 617-630) apply. However, after a certain period, the termination of the free use agreement must not impede the buyer's right to use the real estate.

If the terms of using the land plot are not specified in the sale agreement, the seller retains the right to use the land plot for the purposes related to the real estate.

Conclusion

In any case, when real estate is sold, the buyer will have the right to use the necessary portion of the land plot for the real estate without paying for it, and this right remains unchanged in all circumstances. This guarantees that the buyer's right to use the land plot is secured.

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