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Real estate

Fundamental principles of titles to real estate property, such as guaranteeing private property rights to immovable property and inviolability of private property rights, are defined in the Constitution of Ukraine. Transactions with real estate and other property related aspects are regulated, inter alia, by the Civil Code of Ukraine, the Land Code of Ukraine, the Law of Ukraine “On State Registration of Titles to Real Estate and Their Encumbrances”, the Law of Ukraine “On Mortgage” and the Law of Ukraine “On Land Lease”.

9.1. Real estate concept

The Civil Code of Ukraine defines real estate as land plots and facilities located on them, which may not be moved without their devaluation and change of their target use.

In practice, buildings are divided into residential and commercial real estate. The commercial real estate includes commercial, retail, warehouse and office premises. Residential buildings and premises are considered as the residential real estate.

The enterprise as an integral property complex is also considered as real estate in legal terms. The enterprise as an integral property complex includes all types of property intended for its activities, including land, buildings, equipment, inventory, raw materials, products, claims, debts and rights to trademarks or other marks and other rights.

In terms of legal regulation, land plots and buildings shall be paid a special attention, and they are subject to a special registration procedure.

9.2. Real estate acquisition

Real estate in Ukraine, as a rule, may easily be purchased and sold. Certain restrictions are applied to foreign individuals and legal entities, such as purchase of agricultural land plots. In

addition, there are certain features when buying land of state and municipal property.

The peculiarity of the Ukrainian law on real estate is that a building as property in relation to land is of paramount importance. In this manner, the Civil Code of Ukraine and the Land Code of Ukraine stipulate that the buyer acquires the title to the land where the building is located.

9.2.1. Acquisition of buildings

Pursuant to the Ukrainian legislation, a building is a construction system that consists of bearing and enclosing structures or interconnects that form the ground or underground facilities intended for residence or stay of people, placement of equipment, management of animals, plants and labour objects.

In practice, a title to a building is obtained on the basis of a civil agreement or by law under the state act. The most common form of acquisition of ownership of a building is a purchase and sale agreement.

The purchase and sale agreement of the building shall be in written form and is subject to notarization. Before signing the purchase and sale agreement one shall verify encumbrances and restrictions on alienation on the real estate item. To this end, before notarizing a purchase and sale agreement of the building a notary shall verify the information in the public registers. First of all, these are the State Register of Mortgages, the Unified Register of Prohibitions of Alienation of Real Estate and the State Register of Titles to Real Estate.

The title to the real estate item shall be transferred to the buyer from the date of the purchase and sale agreement registration. A notary with the buyer's ID document shall perform registration of the real estate purchase and sale agreement. On the basis of the purchase and sale agreement, a notary or a state registrar shall enter information about the real estate item into the electronic State Register of Titles to Real Estate. The title to real estate shall be deemed as registered when the relevant decision is published in the register.

As noted, pursuant to the Ukrainian legislation, a building is considered to be prevalent to a land plot. According to the Land Code of Ukraine, the title to a land plot shall be transferred to the buyer along with transfer of ownership of the building located on that plot.

The size of a land plot transferred to the buyer shall be stipulated by the purchase and sale agreement of the building. If the purchase and sale agreement of the building does not provide for the size of a land plot transferred to the buyer, then the title shall be transferred to the land plot where the building is situated and to the part of the land plot required for servicing the building. In the event that the building is in an alien land plot, the buyer acquires the right to use the land plot where the building is located and the part of the land plot required for servicing the building.

9.2.2. Acquisition of land plots

Under the Ukrainian law, a land plot is a portion of the earth's surface with established boundaries and particular location, to which rights are assigned.

Pursuant to their intended purposes, all land plots are classified into nine categories:

- 1) agricultural lands;
- 2) residential and public building lands;
- 3) lands of a nature reserve and another environmental protection purpose;
- 4) lands of health purpose;
- 5) recreational lands;
- 6) lands of historical and cultural purpose;
- 7) forest fund lands;
- 8) water fund lands;
- 9) lands of industrial, transportation, communications, energy, defence and other purposes.

Land plots shall be used only for their intended purpose. However, the Land Code of Ukraine allows changing the intended purpose of a land plot. Such being the case, the land plot owner shall explain the reasons for changing the intended purpose. Duration of the procedure for changing the intended purpose of a land plot is not defined in the legislation, but in practice, this takes quite long.

Both Ukrainian and foreign individuals and legal entities are entitled to acquire land plots. However, there are certain limitations for foreign nationals. The Land Code of Ukraine prohibits the sale of agricultural land to foreign nationals.

Foreign nationals may acquire the ownership right to non-agricultural land plots within the boundaries of settled areas, as well as non-agricultural land plots outside settled areas, on which the buildings, acquired by them, are located.

Foreign legal entities may acquire the ownership right to non-agricultural land plots:

- within the boundaries of settled areas either if they acquire real estate items or items for construction of facilities related to the business activity in Ukraine;
- outside settled areas if they acquire real estate items.

State-owned land plots may be sold to foreign nationals by the Cabinet of Ministers of Ukraine in coordination with the Parliament of Ukraine. The sale of land plots owned by the State and territorial communities to foreign legal entities shall be allowed on condition that the foreign legal entity has registered its permanent representative office and is entitled to conduct the business activity on the territory of Ukraine.

As in case of sale of buildings, the most common type of land acquisition is a purchase and sale agreement. The purchase and sale agreement of a land plot shall be in writing and is subject to notarization. Prior to purchasing a land plot one shall verify encumbrances and restrictions on its alienation. The title to the land plot shall arise from its state registration.



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9.3. Real estate use

The right to use real estate depending on the item (building or land plot) is divided into two groups:

- the right to use a building: lease, leasing and mortgage;
- the right to use a land plot: lease, easement, emphyteusis, superficies and mortgage.

9.4. Lease of buildings

Lease of buildings and parts thereof is governed by the Civil Code of Ukraine. Privately owned buildings and parts thereof are free to be leased to individuals and legal entities.

The right to lease shall arise from a written lease agreement. The lease agreement shall be subject to notarization and state registration, having been entered into for more than three years. A notary shall carry out the state registration of a lease agreement following its notarization. Upon the transfer of the leased item, the parties shall sign the acceptance act certifying the transfer. The same act shall be signed when returning the leased item after the termination of the lease.

In case of sale of the subject of the lease agreement, the buyer shall acquire all rights and obligations under the lease. The parties may also agree that the lease agreement shall be terminated upon the sale of the leased item.

Sublease shall be allowed only with the consent of the lessor. Such a consent may be envisaged in the lease agreement or in the form attached thereto after the conclusion of the lease agreement.

The lessor shall be entitled to request termination of the lease agreement if:

- the lessee uses the leased item contrary to the agreement's scope or item's intended purpose;
- the lessee without the lessor's consent has given the subject of the lease to another person;
- negligent behaviour of the lessee threatens damage to the subject of the lease;
- the lessee has not started structural repairs of the subject of the lease unless the lessee bears no responsibility ensuring such structural repairs.

At the same time, the lessor may terminate the lease agreement if the lessee has delayed lease payments for more than three months.

The lessee shall be entitled to request termination of the lease if:

- the lessor has provided for use the subject of lease that does not comply with the scope of the agreement and its intended purpose;
- the lessor does not comply with its responsibility of carrying out structural repairs of the subject of the lease agreement.

The special regulation of the state-owned and municipal property lease is set out in the Law of Ukraine "On Lease of State-owned and Municipal Property". The law, inter alia, stipulates conditions of lease of state-owned and municipal communal property complexes and their structural units, specific facilities of state-owned and municipal property.

Communal property complexes and individual buildings, which are state-owned, shall be leased by the State Property Fund of Ukraine and its local bodies.

9.5. Land plot lease

The issue of land lease in Ukraine is governed by the Law of Ukraine "On Land Lease". Land plot lease shall mean a contractually based fixed-term paid ownership and use of the land plot required by the lessee for business and other activities.

Lessors of land plots are individuals and legal entities, owning land plots, or persons authorized by them. Lessors of the municipal land plots are rural, village and city councils within their powers. Lessors of the state-owned land plots are the executive authorities that transfer land plots for ownership or use pursuant to the law.

The term of land lease shall be determined by an agreement, but it may not exceed 50 years. This provision shall be applied to all land plots regardless of their ownership.

A land lease agreement shall be concluded in writing and, at the request of one party, may be certified by a notary.

The substantive provisions of the land lease agreement are:

- subject of the lease (the cadastral number, land plot location and size);
- a lease agreement term;
- lease payments with indication of their size, indexing method and terms of payment, terms, procedure for their introduction and revision and liability for default in payments.

The parties to the lease of the land plot may indicate other conditions in the agreement.

Land plots that are state-owned or municipal property shall be leased on the basis of decisions of state authorities.