

State Registration of Property Rights



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Ukrainian laws stipulate that ownership, lease and other property rights that have arisen from the ownership of immovable property and land plots becomes valid after their state registration. In other words, a person may transact with immovable property only after state registration of the respective property rights.

Rights which arise out of ownership and which are subject to state registration are lease, superficies, emphyteusis, easement, property, management rights, and the right of permanent use of a land plot.

It is not only rights but also encumbrances over real estate that are subject to state registration. The system of state registration of property rights in Ukraine has been developed over last few years and is yet to be improved.

Since 1 January 2013 the state registration of property rights has been carried out in accordance with the new rules. As of today, the office of the State Registration Services (hereinafter — the SRS) and notaries act as state registrars. Both are subordinated to the Ministry of Justice of Ukraine. Before 2013 property rights to real estate were registered in a number of registers. In particular, there were different registers for buildings and land plots.

Nowadays, notaries and the SRS have the same access to the Unified State Register of Property Rights and carry out the registration of buildings as well land plots in the same register. The SRS carry out the registration when the new real estate or new land plots have not been subject to registration before. Notaries may provide entries only in case of notarization of real estate transactions.

Prior to registration of land plots, the State Company State Land Cadastre Centre carries out the technical registration of land plots, which

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is legally created for the first time, and assigns the respective cadaster numbers. After that the rights to the land plot can be registered in the Unified Register of Property Rights.

The new Procedure for the State Registration of Property Rights and their Encumbrances, adopted by the Resolutions of the Cabinet of Ministers of Ukraine No.868 of 17 October 2013 (hereinafter — Procedure No.868), came into force on 12 February 2014. It replaced the old Procedure for the State Registration of Property Rights and their Encum-

brances No.703 of 22 June 2011 that was used during 2013.

Procedure No.868 improves and simplifies the procedure for state registration. It contains the following positive developments.

Ownership rights, registered before 2013

As for today the state registration of the rights or encumbrances arising from ownership over immovable property (lease, mortgage) may be performed without preliminary mandatory registration of the ownership



right, if it had already been registered before 2013.

The simplification does not concern the registration of the rights arisen from the ownership to the land plot formed from the state and municipal lands after 2013. In this case, the ownership right of the local community must be registered and then the lease or the permanent use to the land plot can be entered. Practically, both entries will be made simultaneously.

This innovation will have a positive impact for the lessees of the agricultural land plots, registered before 2013. Agricultural companies that lease such land plots can register their lease rights to the agricultural land plots without prior registration of the ownership right by the owners of the land plots.

Moreover, Procedure No.868 allows registration of the ownership right to the land plot even if its title

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document does not contain the cadastre number, assuming the respective statement from the state land cadastre is submitted.

Procedure No.868 provides for special provisions for permanent users of land plots. If a permanent user has lost or damaged the certificate for permanent use, it may register in the new register of the property rights based on the copy, certified by the authority that originally issued the state certificate. This novelty is a very important one as far as issuance of state certificates to land plots was stopped in 2013.

Owners of the immovable property and land plots who have lost their state certificates have the same possibility to register their ownership right based on a copy certified by the authority that originally issued the certificate. It should be taken into account that this novelty may be applied only to title certificates, issued by the state authorities not to notarized agreements or other transactions where the respective documents can be obtained directly from the notary.

Apartments and individual houses

If the new construction (apartments, premises) is financed by private investors, the constructor is required to submit a document to register its ownership right of the investors by the SRS (among them the document confirmed commissioning certificate, the document assigning the postal address of the new building).

The simplified procedure is applied to the state registration of the ownership right to individual residential houses, gardening houses, summer cottages (dachas) and adjacent constructions, if they were built before 5 August 1992. It is not necessary to confirm commissioning of mentioned constructions. The ownership right may be registered based on the technical passport for the house and the document defining its post address.

Unfinished construction

The situation with the state registration of unfinished construction remains quite difficult. To register the ownership right to the unfinished constructed object, the appli-

cant needs to prove the title right to the land plot, to provide for construction permit and technical passport. In case the person bought an unfinished construction and is going to sell it in the same condition, he must formalize the construction permit in his name and then register it, otherwise the sale is impossible.

If a person wants to finalize an unfinished construct, he also must register the construction permit in his name (and in some cases the construction project documentation) to put it into operation. Then he can obtain the certificate for ownership and register his ownership right only. The ownership right to real estate which was not commissioned cannot be registered.

Registration made only by the SRS

It should be mentioned that in some cases the state registration may be done only by the SRS. In particular it concerns cases when the state registration is carried out on the basis of a court decision where the litigant is a legal entity or a private entrepreneur, with regard to entire property complex, hydraulic engineering construction, immovable property with a total area of more than 5,000 square meters, or the property right for land plots acquired at land auction, a land plot of certain categories with the area of more than 1 hectare. This rule is applied when property rights have not been created in the previous registers.

It is interesting that the state registration of property rights may be provided by the SRS by filing of all necessary documents by mail (through Ukrposhta). This innovation went live on 1 November 2013. The SRS says that it has received 25% applicants from citizens by mail.

The state registration of property rights is made by the SRS within five working days. The notary provides the state registration at the date of notarizing the real estate transaction. The refusal in state registration can be challenged in court.

Land shares (pais)

Procedure No.868 does not resolve the problem of state registration of the property right to land shares (pais). Owners of land shares (pais) are in a difficult situation when



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they have the title to the land share (pai) that exists in reality, but the ownership right for it is not certified with a title document. The ownership right to a plot of land in the form of a land share (pai) used to be certified by state acts prior to 2013. As we have mentioned before issuance of state acts for land plot was stopped in 2013. There are a lot of people that still have not obtained state acts for their land plots in the form of land shares (pais).

That is why the owners of land shares (pais) must prepare new documents to receive certificates of ownership from the SRS. However, the current law does not define the special procedure for state registration of such land plots. It is likely that at first the land plots must be registered in the state land cadastre based on land management documentation.

Thus, as for today, the ownership right to land share (pai) cannot be registered in the state register of property rights to immovable proper-

Procedure No.868 does not resolve the problem of state registration of the property right to land shares (pais)

ty. As a result, agricultural companies cannot register leasing agreements with respect to land shares (pais). It would be desirable to regulate this issue via the transitional provisions of the *On State Land Cadastre Act of Ukraine* or the *On State Registration of the Property Rights to Immovable Property and the Encumbrances Act* for the period until the owners of land shares (pais) obtain the documents that legally certify the ownership rights to land plots.

Immovable property in Crimea

The current level of protection of ownership rights to land plots and immovable property located in the Autonomous Republic of Crimea (hereinafter — Crimea) and Sevastopol city is attracting the attention of many Ukrainian and foreign citizens and legal entities.

The Ministry of Justice of Ukraine issued Order No.524/5 of 14 March 2014 *On Measures to Carry out State Registration of Property Rights to Real Es-*

tate (Order No.524/5). Persons who have immovable property in Crimea and Sevastopol still have the right to register their property rights.

In accordance with Order No.524/5 persons who want to register property rights to their immovable property may personally submit their application to the local offices of the State Registration Service of Ukraine (hereinafter — the SRSU) in Crimea and in Sevastopol. In this case the state registration will be carried out by the local offices of the SRSU in Dnepropetrovsk, Khmelnytsky, Chernigov and Odessa. The applicants must indicate their mailing address for correspondence and receipt of the registered title documents.

If the local offices of the SRSU in Crimea do not accept the documents for state registration, applicants have the right to submit their title documents in person or by mail to the local offices of the SRSU in the Kherson and Zaporizhya Regions.

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