

Hot Topic:

Review of Federal Law No. 218-FL “On the State Registration of Real Estate” dated 13 July 2015



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Federal law No. 218-FL “On the State Registration of Real Estate” dated 13 July 2015 unifies the currently existing State Real Estate Cadaster (GKN) and Unified Register of Rights to Real Estate and Transactions Therewith (EGRP) into one Unified State Register of Real Estate (EGRN). The law entails the enactment of more than 30 regulations which will enter into force in 2017. Although Law No. 218-FL in many ways continues and combines the approaches of the previous legislation and court practice, both the authorities, courts, developers and holders of real estate will need some time to get used to the new provisions. The new legislation will entail the following changes.

SIMULTANEOUS REGISTRATION OF BOTH EXISTENCE OF REAL ESTATE AND RIGHTS THERETO

At present to register the rights to new (or modified) real estate it is necessary to submit a cadastral registration application and after (or at the same time) a separate application for the registration of rights. The latter will be considered only after the cadastral registration is completed. Besides the fact that the timeframes for the whole procedure are longer, it also means that the authorities may subsequently suspend each registration and add their comments to the documents submitted. Under the new Law No. 218-FL there is a

single application both for cadastral and rights registration. Rosreestr will have to send all the comments it has to the documents. Hence, there will be no need to go through two (or sometimes more) procedures with different grounds for suspension and refusal.

A SINGLE AUTHORITY FOR CADASTRAL AND RIGHTS REGISTRATION

At the moment, GKN and EGRP are managed by separate institutions; the Federal Cadastral Chamber and Rosreestr, respectively. From 1 January 2017, the EGRN will be managed by a single authority – the Federal Service for State Registration, Cadastre and Cartography. This will ease liaison with the authorities and will eliminate any differences in the approach to registration.

REDUCTION OF THE TIMEFRAMES FOR REGISTRATION

Currently it takes 10 working days for cadastral registration and 10 working days for the registration of rights. Federal Law No. 218-FL stipulates that cadastral registration shall be completed in 5 days, rights registration in 7 days, and the consideration of the application for both cadastral and rights registration in 10 working days.

EXTRITERRITORIAL SUBMISSION

Law No. 218-FL enables extriterritorial submission, which can be considered a revolutionary development. An application for registration can be submitted to a Rosreestr department anywhere in Russia regardless of where the real estate is located. This will substantially reduce costs for investors who now have to travel across Russia just to submit the documents and afterwards to receive the documents back after registration.

LIMITED LIST OF REASONS FOR SUSPENDING AND REFUSING REGISTRATION

According to the present Federal Law No. 122-FL "On the State Registration of Rights to Real Estate and Transactions Therewith" dated 21 July 1997, the reasons for suspending (and afterwards refusing) registration include registrar doubts about the grounds for state registration, about the authenticity of the documents or credibility of the information specified therein. As a result, one can never guarantee that the registration will not be suspended and a refusal will not be received. Law No. 218-FL provides an exhaustive list of explicit reasons for the suspension of registration. Rosreestr can only refuse registration if these reasons are not dealt with within the term of suspension.

AUTOMATIC ENTRY OF CHANGES IN OTHER STATE REGISTERS

Currently, if information in other state registers changes, to introduce the changes into the EGRP the rights holder has to pay a fee, collect the respective documents and submit them to Rosreestr. This needs to be done, for instance, in case the name of a company changes, and in many other cases. If such information is not in the register, it may lead to problems during removal and other transactions related to the real estate. Under Law No. 218-FL, if information has been introduced in other state registers (such as the legal entities state register), the respective authorities shall transfer this information to Rosreestr, and the latter has to make the corresponding changes to the EGRP. If this is not done, a right holder can file an application without providing the respective documents, which Rosreestr will have to request from the state registers.

REGISTRAR LIABILITY FOR UNLAWFULLY SUSPENDING AND REFUSING REGISTRATION

Law No. 218-FL stipulates that a registrar may be held liable for unlawfully suspending and refusing to perform cadastral or rights registration. However, details of this liability are not specified, and shall be stipulated by law. Probably it refers to the so called disciplinary liability imposed by officials, or perhaps some particular amendments will be introduced to other laws later. The registrar will have to compensate all damages caused to Rosreestr.

Besides, the law also introduces a provision that if Rosreestr's lawful actions caused damages previously compensated by the Russian Federation, Rosreestr will be able to take regressive action against the authority, cadastral engineer or any other person whose actions caused these damages (e.g. money paid to an owner whose property was confiscated). This provision will only come into force in 2020.

Apart from these main factors, the new regulations include the following rules, which are sometimes omitted but which are no less important.

COMPULSORY REGISTRATION OF PART OF A PROPERTY FOR THE PURPOSE OF LEASING

For the moment, Rosreestr and the courts sometimes allow the registration of part of a property for the purpose of leasing under the agreement of the parties only, without cadastral registration of the leased (or otherwise encumbered) part. Since 2017, part of a property will have to be registered in the EGRN and burdened by any right or encumbrance. It means that an owner will have to prepare a technical plan in respect of the part of the building (or premises) for registered leasing thereto.

REGISTRATION OF NEWLY BUILT REAL ESTATE ON A LEASED LAND PLOT

For the moment the courts allow a permit to be issued on entry into service after the expiry of the lease (e.g. Resolution of the East-Siberian Circuit Arbitration Court of 8 October 2015 under case No. A33-2845/2015). This

practice will change in 2017, since it is now clearly stipulated in Law No. 218-FL that a land plot tenant can register his or her right to newly built real estate (except an unfinished construction unit) on a land plot only if a permit on the entry into service of the real estate has been received in the term of the lease.

It should be taken into account that even after the real estate is actually built, before its entry into service a developer has to go through many official procedures such as certificate of compliance of the building to project documentation and technical regulations, etc. Besides, the issue of the said permit is under the competence of the respective authorities (as a rule – municipal ones) who may delay or refuse to issue the permit if they are not satisfied with the submitted documents. Hence, there is a risk that the permit on entry into service may not be issued within the lease term for reasons outside the control of the developer. In tandem with the fact that the Land Code of the Russian Federation currently considerably reduces, and in fact almost eliminates the ability to extend a public land

plot lease, these new provisions may have a serious impact on construction practices.

Besides, the above mentioned provision also may be interpreted as such: the rights to an unfinished construction unit can be registered only within the term of the lease. For the moment court practice allows the registration of an unfinished construction unit even after the lease has expired, provided that the actual construction has been performed within the term of the lease.

REGISTRATION WITHOUT CORPORATE APPROVAL OF A TRANSACTION

Under the new provisions of Law No. 218-FL, if the absence of corporate approval does not make the deal invalid per se, Rosreestr can only make a note in the EGRN that no such approval was submitted. Rosreestr cannot refuse or suspend the registration (as it can now) on the basis that no corporate approval was provided along with the registration application. Hence, owners will have to pay more attention to the powers of their CEOs in respect of a company's real estate. |