

NEW LEGAL FRAMEWORK IN RELATION TO CONSTRUCTION RIGHTS AND DIVIDED PROPERTY

Dear Reader,

On 5 March 2015 the parliament has adopted amendments to the Property Law section of the Civil Law and amendments to the law On the Time of Coming into Force and Application Procedure of the Introduction, Inheritance Law, and Property Law Parts of the Renewed Civil Law of the Republic of Latvia of 1937 ("Renewal Law"), which provide for a new civil law concept – construction rights, and simultaneous annulment of the current legal framework regarding divided property. It is planned that the amendments will come into force from 1 January 2017.

We will be happy to answer your specific questions or to assist in dealing with a particular construction law issue.

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With kind regards -



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Description of the current situation and the need for amendments

Section 968 of the Civil Law provides for the basic principle that a building constructed on the land shall be deemed to be a part of the land. Already since 1997 the Renewal Law provides for an exception to this principle – a building constructed on leased land is acknowledged as separate property object during the time when the lease agreement is in force (minimum term of the lease agreement is 10 years).

The most significant problems are related to two issues. First of all, neither the Civil Law, nor the Renewal Law provide for clear regulations in case the term of the lease agreement expires. According to Section 969 of the Civil Law and the current court practice, in case of termination of the lease agreement the owner of the buildings may claim compensation only for such buildings which may be deemed as the necessary expenses in relation to the land plot. Accordingly, recovery of expenses is possible only in very limited cases.

The second significant problem is related to purchasers of apartments who acquire apartment properties or ideal shares in a building which is constructed on leased land. Unless the agreement expressly provides the rights of the apartment owner to acquire also the ideal shares of the land, then there is a risk that upon expiry of the lease agreement the apartment owner may lose the property rights to the apartment.

In order to deal with the above issues, the amendments provided that further establishment of divided property will not be possible in relation apartment buildings, as well as a new concept of construction rights has been introduced whereby the legal relations of the parties are set out more clearly.

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Construction rights

The construction rights give the right to erect non-residential buildings or engineering structures on a land plot owned by another person. It will not be possible to erect residential buildings on the basis of construction rights.

Similarly to the present situation, term of the construction rights may not be shorter than 10 years and the construction rights will be deemed established and valid only after entry into the Land Register. The Construction rights may be granted for remuneration or free of charge.

It is important to note that the construction rights may be inherited transferred to third parties, as well as pledged. In case of a transfer, all of the rights provided in the agreement shall transfer to the acquirer.

In relation to termination of the construction rights it is provided that the rights will terminate by themselves upon expiry of the term registered with the Land Register. It is also provided that all rights of third parties established over the construction rights will terminate simultaneously with expiry of the term of the construction rights, for example, pledge.

Construction rights may be terminated prior to expiry of the term by alignment of rights in one person (the land owner acquires the construction rights or vice versa), by court decision or by agreement of the parties. It should be taken into account that in case of early termination of the construction rights the rights of third parties to the construction rights may not be affected (for example, pledge rights).

According to the new regulations, after expiry of the construction rights the building or engineering structure will become an essential part of the land plot, and the land owner will acquire the building or engineering structure without compensation, unless such compensation is provided in the construction rights agreement. The parties may agree that the user of the construction rights is obliged to clear the land plot prior to expiry of the construction rights. It may be expected that these legal provisions will motivate the parties to set out detailed regulations regarding their legal relations after expiry of the construction rights.

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Transitional provisions

The transitional provisions of the Renewal Law provide that the lease agreements entered prior to 1 January 2017 will be valid and the old procedure will be applicable to such agreements subject to condition that a construction permit has been received. Accordingly, until 1 January 2017 it will be possible to receive a construction permit for construction of a residential building on leased land and to register this building as separate property object after its completion.

However, if the land lease agreement entered prior to 1 January 2017 will not contain provisions regarding ownership of the building after expiry of the lease agreement, then Section 1129.9 of the Civil Law will be applicable, pursuant to which the land owner will acquire the building without remuneration (even compensation of the necessary expenses may not be claimed).

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