

2013 RESUME: AMENDMENTS TO CONSTRUCTION, LAND AND REAL ESTATE LEGISLATION

The article written by Alexander Burtovoy, a Partner at Antika Law Firm, refers to the amendments to the legislation of Ukraine in the field of construction, land and real estate in 2013.

Alexander Burtovoy



PHOTO: ANTIKA

Alexander Burtovoy,
Partner of Antika Law Firm

Major amendments to land, construction and real estate legislation are defined by the fact that since January 1, 2013 a great number of earlier adopted legislative acts entered into force. This refers to legislative acts that regulate strategically important segments of land relations, real estate and construction market, namely, new versions of the Laws of Ukraine **“On State Registration of Proprietary Rights to Real Property and Their Encumbrances”, as of July 1, 2004** (the “Law on registration”) and **“On State Land Cadastre”, as of July 7, 2011** (the “Law on SLC”). Stated laws developed new system for registration of proprietary rights to real property including to land plots, for which the new regulations and registration procedures were established.

The main innovations of the Law on registration and the Law on SLC are listed below.

First and foremost, the registration of proprietary rights to real property is provided by the agencies of the Ministry of Justice of Ukraine (in particular, the State Registration Service of Ukraine and its local authorities) and notaries, but not by the State Agency for Land Resources of Ukraine (the “SALR of Ukraine”) and the Bureau of Technical Inventory (the “BTI”). The notary is a special entity entrusted to register proprietary rights to real property in two cases: 1) registration of proprietary rights to real prop-

erty while transferring right when first registration was performed through prior acted registration procedure; 2) registration of proprietary rights to real property while transferring right when first registration was performed through new registration procedure.

Secondly, having implemented the new system for registration of proprietary rights to real property and their encumbrances, the force of the Register of Ownership Rights to Real Property, Unified Register of Prohibitions of Alienations of Real Property, State Register of Mortgages (the “Old registers”) was terminated. Now, all data on registration of proprietary rights to real property and their encumbrances shall be transferred the State Register of Proprietary Rights and Encumbrances over Real Property (the “**State Register of Rights**”). But at the same time the rights registered in the old registers remain in force as well.

Thirdly, the registration of proprietary rights to land plots has peculiarities due to the fact that land plots’ formation and registration of rights thereto are performed through maintaining two state registers: the State Land Cadastre (to register land plots’ formation) and the State Register of Rights (to register rights to land plots), that is why introduction of the unified State Register of Rights still requires land plots registration in the State Land Cadastre. The SLC includes data related to land plot and its registration, and the State Register of Rights includes data related to proprietary rights and their encumbrances. The procedure of land plots’ formation and their registration still includes filing Land records based on land organization documents. The document that proves land plot’s formation is extract from SLC, the part of which is its cadastral plan.

Fourthly, the terms for the state registration of proprietary rights to real property objects were determined. Registration of rights (or, refusal to register thereof) shall be performed within fourteen days since the authority of state registration of rights received such an application as well as other documents determined by the Law on registration and legislative acts adopted pursuant to the law. The state registration of mortgage shall be performed within one business day and the registration of encumbrance on the same day when the respective application and other necessary documents have been received. Within the framework of the

notarial actions state registration of rights and their encumbrance shall be performed simultaneously with performing such actions.

On January 1, 2013 the amendments to Article 15 of the Law of Ukraine “On State Registration of Proprietary Rights to Real Property and Their Encumbrances” entered into force. According to them the state registration of proprietary rights should be completed within 5 business days when the application and other necessary documents have been received; the registration on their encumbrances – on the day when the application and other necessary documents have been received; property right to an enterprise as integral property complex with obtaining certificate – within 14 business days when the application and other necessary documents have been received.

Moreover, the Decree of the Cabinet of Ministers of Ukraine “On Approval of the Procedure of State Registration of Rights to Real Property and Their Encumbrances and the Procedure of Providing Data From the State Register of Proprietary Rights to Real Property” #703 as of June 22, 2011 terminates on February 12, 2014 due to the Decree of the Cabinet of Ministers of Ukraine “On Approval of the Procedure of State Registration of Rights to Real Property and Their Encumbrances and the Procedure of Providing Data From the State Register of Proprietary Rights to Real Property” #868 as of October 17, 2013 (“Decree #868”) that entered into force. Decree #868 partially improved and organized the procedure of registration by specifying certain provisions (in particular, defining the applicant in every single case). Now, the applicant besides existing possibility to apply to the registration service has an alternative to send them via post or courier service. In case of absence of data in the State Register they may be obtained from the registers acted until January 1, 2013. Also, Decree #868 simplified the procedure for obtaining certificate of proprietorship in case of losing, defecting, or damaging right establishing documents; regulated the procedure for registration of state or municipal proprietorship that had not been registered before in case of right establishing documents absence. As for registration of proprietary right, the main modifications were related to primary transferee. The procedure for registration of secondary transferee was not modified significantly. Within the primary registration of proprietary rights to the object, the construction of which was performed raising the physical and legal entities funds, or at the result of cooperative society activities, the applicant (concerned person) is investor (a person who obtained proprietary rights) and the member of the cooperative society. If the construction completes and the state registration of rights to such objects performs after January 1, 2013 the applicant is the construction owner or, respectively, the cooperative society. The Decree #868 clearly defines “improved” list of documents per each applicant (for

example, if the applicant is an investor, the authorized by the construction owner copies of document to certify the right to land plot are applied; in case of reconstruction – the rights to object before reconstruction, its acceptance into service, address assignment). The document that certifies the acceptance into service of individual (manor) houses, gardens, country houses, household (outbuildings) buildings and constructions, additions thereto the construction of which has been completed until August 5, 1992, is technical certificate. In addition to this, there is no need to apply the decision of the competent authority in order to register object due to its transferring from residential into non-residential status.

Also, on January 1, 2013 the Law of Ukraine “**On Amendments to Some Legislative Acts of Ukraine on the Delimitation of Land in State and Municipal Ownership**” as of September 6, 2013 entered into force. The main innovation of this Law is that since its entry into force all lands of state and municipal ownership shall be considered as delimited. According to this Law the lands of municipal ownership of respective territorial community are the following:

- a) land plots where buildings, structures, and other objects of real property of municipal ownership of the respective territorial community are located, and that are in constant use of local authorities, municipal enterprises, institutions, organizations, and
- b) all other lands located within the respective localities, except land plots of private and state ownership.

Land plots that remain of state ownership are:

- a) land plots located within the respective human settlements where buildings, structures, and other objects of real property of state ownership are located, and that are in constant use of local authorities, municipal enterprises, institutions, organizations, National Academy of Sciences of Ukraine, state branch academies of sciences that are related to defense lands;
- b) land plots used by the Black Sea Fleet of the Russian Federation on the territory of Ukraine according to the international agreements, consent to be bound by which was provided by the Verkhovna Rada of Ukraine;
- c) the land of exclusion areas and unconditional (mandatory) resettlement incurred to radioactive contamination at the result of the Chernobyl disaster, and
- d) all other lands located outside of the human settlements, except for land plots of private and municipal ownership.

The attention should be paid on provisions of Article 4-1 of the Law on registration (the article amended the Law on registration pursuant to the **Law of Ukraine “On Amending Certain Laws of Ukraine Related to Improvement of the Procedure of State Registration of Proprietary Rights to Land Plots of State and Municipal Ownership Due to Their Delimitation” as of May 14, 2013**). The new regulation stipulates that the decisions of executive or local authorities on transferring land plots to the ownership or usage is accepted

Since January 1, 2013 a great number of earlier adopted legislative acts that regulate strategically important segments of land relations, real estate and construction market entered into force



without state registration of the right of state or territorial community to such land plots except cases when the right of state or territorial community has already been registered in the State Register of Rights. Registration of the right of state or territorial community to land plots is performed after land organization documents were approved simultaneously with the state registration of derivative proprietary right to such land plots.

Amendments to legislation touched the procedure of land plots allocation. **The Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine concerning improvement of the procedure of land plots allocation” as of July 2, 2013 #365-VII** elaborated the approval procedure of land plots allocation project (specifying the authorities where the allocation project should be approved), abandoned to request documents and data that are not stipulated by the law, introduced the reg-



PHOTO: IS

ulation that the extract from SLC may be issued by any cadastral registering clerk irrespectively of land plot's location. Also, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine concerning improvement of the procedure of land plots allocation" as of July 2, 2013 #365-VII abandoned to request documents that are not stipulated by the law, avoided the necessity to submit extract from the cadastral plan while applying to obtain a land plot into own-

ership within the framework of free privatization (now these are "graphic materials" that actually appear to be the Google Earth copy), provided regulation of "tacit consent" (if the respective authority replies nothing within one month since the application (request) on land plot allocation has been made, the applicant enjoys the right to provide notification on order to develop allocation project and agreement on developing allocation project), amended the Code of Ukraine on Administrative Offences. In particular, **Article 53-5 of the Code of Ukraine on Administrative Offences** stipulates that if the official of the Council of Ministers of the Autonomous Republic of Crimea, executive authority, or local government failure to meet the time limit for agreeing (refusal) land organization documents (p.3 of the Art. 123 of the Land Code of Ukraine stipulates one-month period) shall recover penalty amounted from 30 to 50 of tax-exempt minimum of citizens' income. If the official performed the same actions within the year and was brought to liability the penalty shall amount from 50 to 200 of tax-exempt minimum of citizens' income.

Also, in 2013 a number of subordinate acts aimed at implementation of the above stated Laws of Ukraine entered into force, including **Decree of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for the State Land Cadastre"** as of October 13, 2012; **Decree of the Cabinet of Ministers of Ukraine "On Data Exchange between the Authority of Maintaining the State Land Cadastre and the Authority of State Registration of Rights"** #118 as of February 22, 2013; **Decree of the Cabinet of Ministers of Ukraine "On Amendments to the Methodology of Normative Monetary Value of Non-Agricultural Land (except localities)"** #1278 as of November 11, 2011 and others.

In our opinion, it is also worth noticing that in 2013 the possibility to use public cadastral plan appeared. It is available on the official website of the SALR of Ukraine at the following link: <http://map.dazru.gov.ua/kadastrova-karta>.

It should be noted that in 2013 the amendments occurred not only in the field of objects of real property formation and registration of proprietary rights thereto but in the field of construction as well.

Since January 1, 2013 a number of provisions of Law of Ukraine "On Regulation of Urban Development Activities" came into force. In particular, p.p. 3, 4 of Art. 24 of the Law that prohibits transferring land owned by the state as well as the municipal land into ownership for urban development needs. Also, it forbids changing the purpose of land in the absence of a zoning plan or a detailed plan of the territory, adopted pursuant to the law requirements. In addition, p.6 of Section V of the Final provisions stipulated that until January 1, 2013 the decisions related to determining and providing urban development terms and restrictions were taken by the competent authorities for urban development and architecture taking into account previous planning concept within the term stipulated by the law. In order to settle prob-

leaves the **Law of Ukraine “On Amendments to the Section V “Transitional Provisions” of the Law of Ukraine “On Regulation of Urban Development Activities” related to cease the ban on land plots’ allocation as of September 19, 2013 #606-VII** was adopted (the Law entered into force on October 16, 2013). Due to this, the decisions related to determining and providing urban development terms and restrictions on the territories where according to the Law of Ukraine “On Regulation of Urban Development Activities” zoning plans or detailed plans of the territories have not been adopted are taken by the competent authorities for urban development and architecture taking into account previous planning concept within the term stipulated by the law that is January 1, 2015 not January 1, 2013. The Law of Ukraine was amended with p. 6-1 stipulated that p.p. 3, 4 of Art. 24 of the Law do not have effect on the territory where zoning plans or detailed plans of the territories have not been adopted. Nevertheless, as practice shows, developers settle the problem of detailed plan of the territory providing full financing of works.

On January 5, 2013 the **Law of Ukraine “On Amendments to Certain Legislative Acts “On Amendments to Certain Ukrainian Legislation on Issues Related to Regulation of Urban Development Activities” as of November 20, 2012** entered into force. The Law amended Art. 96 of the Code of Ukraine on Administrative Offences stating that the sanction (penalty recovery) amounted from 600 to 700 of tax-exempt minimum of citizens’ income are imposed in case of performing construction works without permit only against objects of IV difficulty category. The penalty amounted from 350 to 400 of tax-exempt minimum of citizens’ income is recovered for I difficulty category construction objects operation, that were not accepted for operation but finished since January 19, 2012. The penalty amounted from 600 to 700 of tax-exempt minimum of citizens’ income is recovered for IV difficulty category construction objects operation, that were not accepted for operation but finished since January 19, 2012. The Law amended the **Law of Ukraine “On Architectural Activity”** stipulated the list of documents to be applied for competency assessment of the citizen (necessary to obtain qualification certificate of works (service) executor related to architectural object construction), its obtaining procedure and validity. The **Law of Ukraine “On Improvement of Human Settlements”** was amended with list of objects that belong to hardscape elements. Amendments to the **Law of Ukraine “On Regulation of Urban Development”** mainly occurred in the field of drafting urban development documents as well as regulating initial data for construction object. The very important amendment to the law stipulates that the technical specifications act until the construction object is finished irrespectively of the customer’s change.

On January, 2013 the **Order of the Ministry of Regional Development of Ukraine “On Approval of Amendments to Instruction on Conducting Technical Inventory Procedure for**

Real Property Objects” as of December 28, 2013 #658 entered into force. It amended the Instruction on conducting technical inventory procedure for real property objects as of May 24, 2001 #127. The main peculiarity of this Order is that since 2013 the technical inventory for real property objects is not performed by the Bureau of Technical Inventory anymore. It is carried out by economic entities that include one or more work executors on technical inventory professionally attested in the Ministry of Regional Development of Ukraine. Moreover, the Order of the Ministry of Regional Development of Ukraine #658 stipulated that technical inventory is performed before accepting finished construction objects into operation as well as after reconstruction or rehabilitation; before state registration of proprietary right to unfinished construction object; before state registration of proprietary right to real property object established at the result of separating, connecting of real property object or separating its part except for cases at the result of which separation, connection or separation of a part, the finished construction object had been accepted into operation. In all other cases, technical inventory is conducted at customer’s will.

Also, the **Order of the Ministry of Regional Development of Ukraine “On Approval the Procedure of accepting into operation individual (manor) houses, gardens, country houses, household (outbuildings) buildings and constructions, additions thereto, public buildings and buildings and structure for agricultural needs of I and II difficulty categories constructed without permit for performing construction works and conducting technical inspection of their engineer constructions and utility services” #95 as of March 19, 2013** adopted the respective procedure of accepting above stated objects into operation.

As it has been noted before, changes in the procedure for providing control in the field of urban development activity and imposing penalties for offences occurred as well. On October 29, 2013 the **Resolution of the Cabinet of Ministers of Ukraine #735 as of October 2, 2013** entered into force. It stipulates the new procedure for imposing penalties for offences in the field of urban development activity. Compared to the previous version, the new one improves the procedure of detecting offences as well as the procedure of considering case on offences by the competent official. The new version includes a number of interesting amendments that in case of proper use shall assist the urban development entity to counter effectively the attempts of unconscionable officials to impose liability on such an entity for offences in the field of urban development activity having no grounds for such measures.

Resuming all the stated above it should be noted that 2013 was a year of significant amendments and reforms in the legislation. Nevertheless, it is safe to say that in the nearest future many other amendments should be made in order to provide a proper implementation of new regulations.



TRADITIONS IN LAW

ANTITRUST
LITIGATION & ARBITRATION
CRIMINAL DEFENSE FOR BUSINESS
CONSTRUCTION & REAL ESTATE
SUBSOIL USE, ENERGY
PROJECT FINANCING
CORPORATE AND M&A
INTELLECTUAL PROPERTY
LEGAL EXPERTISE

12, Khreschatyk Str., 2nd floor, Kyiv, 01001, Ukraine
tel./fax.: +38 044 390 09 20/21
office@antikalaw.com.ua
www.antikalaw.com.ua