

AMENDMENTS TO THE FIELD OF URBAN PLANNING IN 2016



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We would like to start the review of amendments to the field of urban planning occurred in 2016 by making intermediate conclusions on decentralization reform started in 2015, in particular, to dwell on a question related to transferring of powers of the state architectural and construction control to the local authorities implementation. Pursuant to information placed on the official website of the State Architectural and Construction Inspection of Ukraine (hereinafter – the SACI of Ukraine) in the end of 2016, the respective powers received 50 territorial communities, including 15 cities of regional significance, namely Kyiv, Odesa, Dnipro, Uzhorod, Lutsk, Lviv, Ivano-Frankivsk, Ternopil, Chernivtsi, Kharkiv, Sumy, Kherson, Mariupol, Zhytomyr, Cherkasy.

At the moment of receiving of the respective powers the local authorities of such territorial communities are empowered to influence the whole construction circle starting from allocating the land plot for construction and finishing with acceptance of constructed

objects into service.

It is necessary to remind that in 2015 the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Relating to Decentralization of Powers in the Field of Architectural and Construction Control and Improvement of Urban Planning Legislation” was adopted. It stipulates the decentralization of state’s functions in the field of urban planning activities regulation.

LICENSING

Among important events in the field of urban planning occurred in 2016, it is necessary to mention the Decree of the Cabinet of Ministers of Ukraine #256 as of March 30, 2016 “Certain Issues Related to Licensing of Construction Objects of IV and V Categories of Complexity” that approved new licensing terms to perform economic activity on construction of objects of IV and V categories of complexity. Thus, this document removed certain discrepancies and contradictions excited since the Law of Ukraine “On Licensing of Types

of Economic Activity” had been adopted on March 2, 2015. Despite the fact that it took more than one year to approve the abovementioned regulatory act, its acceptance is a positive event. First of all, it minimizes the risk of variety of interpretations of existing norms that in its turn further helps to implement the principle of legal certainty into national law improving regulatory environment. It is necessary to remind, that in 2015 the list of types of activities related to building of architectural objects and that have to be licensed was amended. The design, construction of objects of I-III categories of complexity as well as engineering activity and others were excluded from the list.

It is also necessary to mention the fundamental changes in approaches to define the license. Recently, the license was considered to be any document (in paper or electronic form). The acting version of the Law of Ukraine “On Licensing of Types of Economic Activity” does not stipulate the paper form of issuing licenses. The license itself is determined as a record

in the Unified State Register of Legal Entities and Individual Entrepreneurs and Non-Governmental Organizations about the decision of the licensing body stating that the economic entity enjoys the right to perform the respective type of economic activity subject to licensing. In its turn, the abovementioned licensing terms, in particular, the application form to issue the license (appendix #1 to licensing terms) in this respect is outdated because it offers a possibility to choose the form of license (in paper or electronic form). In this regard, it is to be hoped that eventually the rule making process will be more coordinated and well-timed.

REGISTRATION OF RIGHTS AND THEIR ENCUMBRANCES

In 2016, the Law of Ukraine "On Procedure of Registration of Proprietary Rights to Real Estate and Their Encumbrances" as well as the Procedure for state registration of proprietary rights to real estate and their encumbrances experienced amendments several times.

At the beginning of the year, the abovementioned law was drafted in the new version that further was corrected taking into account the amendments that had been introduced by the Law of Ukraine "On Amendments to Certain Legislation Acts of Ukraine Concerning Improvement of State Registration of Rights to Real Estate and Ownership Rights Protection" (entered into force on November 2, 2016).

The main amendments accepted in 2016 and that are currently in force in the field of state registration of rights and their encumbrances can be described as follows:

- gradual transfer of powers in the field of state registration of rights to the local government authorities;
- the Ministry of Justice of Ukraine controls the activity in the field of state registration of rights;
- the notaries were authorized to perform registration actions regardless the certification of real

estate transactions;

- the possibility to perform registration activities concerning the real estate on the territory of the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol (so called extraterritoriality principle). Pursuant to the version acted from the beginning of the year, the extraterritoriality principle was not limited to the territory of the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol if the registration actions had been performed by the notaries. Pursuant to the current version the extraterritoriality within the territory of Ukraine is maintained only concerning the state registration of encumbrances of proprietary rights;
- the possibility to register the ownership right to the unfinished construction object;
- extension of list of informational systems which the state registration deals with mandatory while performing the registration actions. In particular, such systems include the State Land Cadaster, the Unified Register of Authorization Documents that allows to perform pre-construction and construction works, and that proves that the constructed object was commissioned, the Unified State Register of Court Decisions;
- amendments to the procedure of performing registration actions on the basis of the court decisions. The registration actions are performed solely on the basis of the court decisions obtained from the Unified State Register of Court Decisions, excluding the necessity to file the respective application. Therewith, the final and transitional provisions of the law stipulate that until the moment of informational cooperation implementation as well as in respect to the court decisions entered into force before the moment of such cooperation

implementation, the registration actions on the basis of the court decisions are performed through filing the respective application.

- the state registration is obliged to notify the owner of the real estate in respect of whom the application to perform registration actions was filed;
- securing of right of the owners of the real estate to file an application to the state registrar to prohibit performing registration actions in respect to the real estate object they own and the corresponding responsibility of the state registrar to terminate the state registration of rights for a certain period of time;
- abolition of ownership certificate. From the beginning of the year during the first registration of newly constructed objects or reconstructed objects the owners received extraction from the electronic register without seal and signature. The latest amendments brought back the possibility to obtain on applicant's request the extraction from the state register of rights in paper form with seal and signature of the registrar who performed registration actions;
- the state registration of ownership rights to real estate object is performed within five business days;
- the amount of the administrative fee to perform the state registration of rights at the result of performing notarial actions

AMONG THE MAIN AMENDMENTS ACCEPTED IN 2016 THE POSSIBILITY TO REGISTER THE OWNERSHIP RIGHT TO THE UNFINISHED CONSTRUCTION OBJECT SHOULD BE NOTED



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does not depend on the terms of its performance and it equal to 0,1 of minimum wage.

It is worth noting that the process of registration of rights became quicker and less time consuming.

It is also necessary to say that in order to implement the new powers of the Ministry of Justice of Ukraine in the field of state registration, the Decree of the Cabinet of Ministers of Ukraine #990 as of December 21, 2016 approved the Procedure of exercising control over the field of state registration.

The Ministry of Justice of Ukraine will exercise control over the activity of the subjects of state registration and state registrars not only while considering the claims for decisions, actions or lack of actions in the field of registration, but it also will monitor registration actions in the State register of rights. The procedure determines grounds and criteria to perform such registration actions monitoring. The detection of violation of the state registration procedure becomes a ground for the Ministry of

Justice of Ukraine to perform internal audit of the state registrars and/or subjects of state registration.

CERTAIN TAX ASPECTS

On December 24, 2015 the Verkhovna Rada of Ukraine adopted the Law #909 that introduced amendments in terms of real estate taxation.

In contrast to the norms acted before, from the beginning of 2016 the taxation is imposed on residential real estate (apartment, house) as well as on the business objects of non-residential property (sheds, garages, cookhouses, cowsheds, workshops, cellars etc.).

The marginal tax rate increased from 2% until 3% of the minimum wage per 1 sq m of the object of residential and/or non-residential real estate. In 2016 it is equal to 41.34 per 1 sq m.

The tax rate ranging from 0% to 3% is determined by the local council.

RESPONSIBILITY IN THE FIELD OF URBAN PLANNING

The base to calculate the amount of fines stipulated by the Law of Ukraine

“On Responsibility for Violations in the Urban Planning Sphere” was amended. The minimum wage that served as a basis to define the amount of responsibility for any violation in the urban planning was amended into living wage. The respective Law #1791-VIII was adopted on December 20, 2016.

It is rhetorical how to evaluate such amendment. Taking into account the latest amendments in the budget legislation, the abovementioned amendments are aimed at preventing the 100% increase of extent of responsibility (in absolute figures) when the new year comes.

NEW NORMS, NEW REGULATIONS, NEW STANDARDS

The Decree of the Ministry of Regional Development #115 as of May 5, 2016 replaced the State Construction Standards (SCS) A.3.1-5:2009 with the SCS A.3.1-5:2016 “Construction operations organization”. These norms stipulate general requirements to construction

operations' organization during the new construction, reconstruction, capital repair, technical re-equipment of buildings, constructions, installations of any purpose, their complexes or parts, linear facility of transport infrastructure.

The first version of the SCS B.2.5-28:2016 was drafted. It is aimed at amending the SCS B.2.5-28:2006 and deals with issues on illumination engineering of the territories, facilities (new or constructed), buildings and constructions of various purposes, places for work performance in open areas, areas with industrial and agricultural enterprises, railroad tracks, villages and populated places.

The new SCS B.2.6-31:2016 "Thermal insulation of buildings" entered into force on April 4, 2017. The regulations of these norms stipulate the minimum requirements to thermo-technical criteria of heat-insulating cover of the building and energy characteristic features of the buildings or their separate parts determined on the basis of economically proved level of energy efficiency of building taking into account its expected life cycle and following a number of other conditions.

Started from January 1, 2016 and September 1, 2016, the amendments #1 and #2 respectively to the State Standards of Ukraine B D.1.1-7:2013 "Rules of the value of design and survey work and expertise of design documentation for construction" entered into force.

TREND IN THE FIELD

In conclusion we would like to say a few words related to the perspective amendments.

One of the most resonant draft laws in the field of urban planning in 2016 was the draft law No.4733-1 "On Amendments to Certain Legislative Acts Concerning Improvement of Urban Planning" introduced by the Cabinet of Ministers of Ukraine into the Verkhovna Rada. Pursuant to the results of voting that took place on July 12, 2016, the draft law was

taken as a basis, and on January 17, 2017 238 people's deputies voted for it during the second reading. The Law was signed by the President of Ukraine and published. It will enter into force on June 10, 2017. What should be expected after it will enter into force?

One of the main innovations that the law offers is to replace five categories of complexity of the objects on which the procedure to start construction and to accept constructed objects into service depends by three consequences classes (low, middle and significant). It also stipulates transfer from three stages licensing system (notification, declaration, permit) into two stages licensing system (notification, permit). The list of circumstances about the changes of which architectural and construction inspection shall be informed during the construction was amended. In particular, the owner must inform the competent authority of architectural and construction inspection about the amendments in project documentation within 3 business days. It is forbidden to continue construction without such notification and pursuant to Article 96 of the Code of Ukraine on Administrative Offences in case of failure to provide such information a fine in the amount of 200-300 of the individual income tax exemption is provided.

Furthermore, question of issuance, amending and annulment of urban planning conditions and restrictions is regulated by law; in particular, a complete list of documents required for their obtaining was established.

Certainly, the adoption of this law is a step ahead aimed at harmonization of national legislation with the established European practice and approaches to construction, introduction of which shall help to minimize abuse by dishonest building owners, who underestimate categories of complexity of the construction objects intentionally in order to avoid licensing procedures.

Who receives the benefit from adopted amendments? It is more likely that such amendments will work for the benefit of persons who issue licenses because pursuant to the draft law, the construction of architecture objects that belongs to the class of "average consequences" are subject for being licensed and this is rather wide range of objects, such as apartment blocks, schools, hospitals, shopping malls etc. Those who conduct expertise of project documentation will benefit from this as well. Pursuant to the acting legislation, the expertise is binding only for objects of the IV and V categories of complexity but after the law comes into force it will be binding for objects that now belong to the III category of complexity.

We believe that one of the side effects of adopted amendments can possibly involve rising in price of the construction process which ultimately will impact investors.

Broadly speaking, the last year was not easy but if to speak about the approved amendments in the field of urban planning it was stepwise. The discrepancies and defects of the reforms were removed; a number of subordinate legislative acts were brought into accordance with the requirements of the laws. Therefore, making conclusions of the expiring year, it is safe to say that its task was performed, because the biggest part of the amendments that had been taken in the previous year do well.

**NOW THE STATE
REGISTRATION IS OBLIGED
TO NOTIFY THE OWNER
OF THE REAL ESTATE
IN RESPECT OF WHOM
THE APPLICATION
TO PERFORM
REGISTRATION
ACTIONS WAS FILED**