

To a Question on Aims and Objectives of the State Registration of Real Estate Rights

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Submitted: Sep 13, 2013; **Accepted:** Nov 13, 2013; **Published:** Nov 30, 2013

Abstract: The paper reveals the need for standards in the Law "On State Registration of Rights to Real Estate" that embodies the goals and objectives of the state registration. In support of this need, the points of view of various authors on the basis of which the author articulates the goals and objectives of the state registration are given.

Key words: State registration • Real estate • Rights to real property

INTRODUCTION

Today, the real estate is one of the foundations of sustainable economic development of the citizens, is the basis of economic activities of enterprises and organizations of all forms of property, as well as the state as a whole. Kazakhstan is actively shaping the real estate market and a growing number of individuals and institutions involved in its public circulation. Therefore, the optimal real estate accounting is one of the most important and highly relevant problems in the field of economic policy of any state. Leading role in the organization of such account has state registration of rights to real property, which is governed by the law of the same name.¹

State registration system in Kazakhstan has existed for over 17 years. The very first piece of legislation in this area was the Decree of the President of the Republic of Kazakhstan having the force of law from December 25, 1995 No 2727 "On state registration of rights to immovable property and transactions with it", which was of great importance. This legal act in no small measure contributed to the formation of the real estate market, which is today one of the most advanced, dynamic and highly attractive for investment. However, we must recognize that the decree had many gaps and contradictions, which negatively affected the turnover of immovable property, as well as the interests of its members.

The adoption of the new Law of the Republic of Kazakhstan of July 26, 2007 No 310 "On State Registration

of Rights to Real Estate and Transactions" (hereinafter - the Law on State Registration) is a new step in the improvement of the registration system in Kazakhstan.

The law on state registration, in contrast to the Decree on registration of rights to real estate, was able to resolve many of the issues in the interests of rights holders, consumers of legal information from legal cadastre and the state.

However, unresolved issues still remain and one of them is the lack of a law on state registration of rules defining the goals and objectives of this legal act, although it is stated in the preamble, that the legal act defines the goals, objectives and legal basis for the state registration of real estate rights. The practical importance of the goal is that the goal, but rather its implementation is the most important indicator of the effectiveness of the activity. Thus, the lack of goal in the law on state registration may lead to the use of the law for purposes other than the protection of the rights and legitimate interests of stakeholders, purposes.

RESULTS AND DISCUSSION

The overall goal of any act of application of the law, according to V. V. Lazarev, is to "special assistance to subjects of law, calling for execution and implementation of the legal provisions in the special intervention in the process of implementing the law, in order to call it, to control it, to encourage its members and hold them accountable," [1, p.40-41].

The specific objective of the state registration of rights to immovable property and transactions with it is to protect and safeguard the legitimate property rights to immovable property of citizens and legal entities by establishing a system of state guarantees of the protection and defense of the rights registered, ensuring the stability of civil law in the country [2, p. 30].

Thus, M.G. Piskunova, giving the classification of purposes of state registration of real estate rights, points out: "The main legal objective is to provide the legal stability of the civil law and by confirming and the state guarantee of property rights. Social purpose is to ensure the legality of the real estate, protection of rights and legitimate interests of the contracting parties and third individuals. Economic objective - providing favorable investment conditions, "transparency" of the real estate market, reducing economic risks, streamlining tax collection. Information and managerial goal - providing individuals and legal entities, bodies of state power and local self-government with reliable information about the civil Rights Act of real estate "[3, p.22].

V.V. Chubarov, giving the characteristics of the system of state registration of rights to immovable property specifies that "the introduction of such a system has several objectives: a) to give maximum openness (transparency) of the rights to real property, as well as information about those rights and b) to introduce government control over transactions with real estate (transferring of the rights to it) and thus, to protect the rights and legitimate interests of citizens, legal persons and public entities, c) introduce uniformity in the registration of real estate on the territory of Russian Federation " [4].

It is obvious that the abovementioned authors put a positive purpose, have to be achieved; however, there are some researchers who put other priorities, which are difficult to accept.

So, A.R. Kirsanov, supporting the position of the PV Krashennikov that "the state registration of rights to immovable property and transactions with has been established in the interests of the state and society, as well as to protect the rights and legitimate interests of citizens and legal persons", further explains, that "the interests of the state and society are 1) to establish a database for the property tax, 2) to provide authorities and local self-government with reliable information about real estate in order to manage these assets effectively, 3) to create the conditions for implementation of economic reform policies " [5].

V.A. Poroshkov asserts that "the state registration of immovable property is a means of state control over the circulation of real estate, as well as acting as a legal fact in the civil law" [6, p.7].

We do not support the authors' position that defines the interests of the state as a priority in the formation of the registration system. We believe that it is necessary, above all, to secure in the legislation a provision stating that the first and primary goal of state registration is the protection of the rights and interests of all participants of civil property circulation and the state, according to Article 111 of the Civil Code of the Republic of Kazakhstan, acts in the relations regulated by civil law on equal footing with other participants of this relationship [7.]. It should be also taken into consideration, in the Law on State Registration.

Thus, considering the above mentioned, we propose to distinguish the following objectives of the state registration of real estate:

- Protection of the rights and legitimate interests of all participants of civil turnover;
- Providing stakeholders with reliable information on the registered title for real estate;
- Ensuring the legitimate, stable, transparent civil turnover of immovable property;
- The establishment of mechanisms for effective state influence on the real estate market;
- The implementation of the fiscal function by the state, with the purpose of supplementing the state budget, at the expense of turnover of real estate;
- Prevention and suppression of offenses and crimes in the property market, ensuring a stable real estate market.

The state registration of rights to immovable property used by the state as a legal instrument to ensure the stability, legitimacy and transparency of real estate turnover. This is achieved by creating a unified information system of legal inventory, allowing all interested parties to obtain reliable information about the interests of their real estate assets. The effective economic activity of participants of civil turnover in the market depends on the steady state of real estate turnover and the exact legal status of the property. For example, making the deal, the party is interested in "legal purity" of the object, that is confirmed by excerpt of unified information system of labor cadastre (UISLC), which contains "information on existing and termination of

rights to real property, identifying characteristics of real estate, information about rights holders, information about the requests on the available information from the legal cadastre " [Law of the Republic of Kazakhstan, 2007].

The submission of such information helps minimize risks to participants of civil relations in real estate sector, prevent and suppress crimes and offenses in this area, increase the investment attractiveness of Kazakhstan.

Transparency and openness of rights to real estate, is provided by fixing them in UISLC which is also necessary for the functioning of the public authorities.

With the help of state registration fiscal challenges are performed and in this sense the mechanism of state registration protects the interests of the state. For example, the service of judicial executors in the implementation of its functions rely on data of UISLC, getting out the necessary information on the presence or absence of the property of a particular person, the tax authorities, using the information provided by the registration authorities calculate the base on land tax.

To achieve the above mentioned objectives, the registration authorities must be put a number of tasks, the realization of which will contribute to the implementation of the public interest and the interests of individuals and legal entities relating to the provision of government guarantees of their rights to property.

The objectives of the state registration of rights to real estate are:

- Further support and development of the system of justice whose responsibilities include the registration of real property rights;
- Provision of state guarantees for the rights to immovable property by determining the liability of party, funding source of such liability for violations committed during the registration of rights to real property;
- Development of legislative and other regulatory legal acts aimed at improving and developing the system of state registration of rights to immovable property;
- Ensuring a quick and timely exchange of information between the extraterritorial judicial authorities to use UISLC, as well as to provide information for interested parties;
- Protection of the information contained in UISLC, from unauthorized access, by means of interaction with law enforcement authorities
- Regular training, professional development, attestation of judicial officers on issues of the state registration of rights to immovable property, etc.

CONCLUSION

So, taking the above mentioned into consideration, we should fully agree with the need to specify the goals and objectives that is full implementation of the function of the Law on State Registration preamble.

After all, "the full effectiveness of the law is achieved only when all of its short – term, long-term and final goals are achieved with the least damage to the various social values, with the least economic expenses, in the possible shortest time" [9].

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