

CLIENT UPDATE

GROUND AND PROCEDURE FOR SEIZURE OF LAND PLOTS DEFINED

MOSCOW

Alyona N. Kucher
ankucher@debevoise.com

Ivan V. Podbereznyak
ivpodbereznyak@debevoise.com

Natalia A. Putilina
naputilina@debevoise.com

To Our Clients and Friends:

Federal Law No. 123-FZ dated June 7, 2013 on Amendments to the Land Code of the Russian Federation and Article 3 of the Federal Law on Entry into Force of the Land Code of the Russian Federation (“Law No. 123-FZ”), which takes effect starting September 6, 2013. Law No. 123-FZ, defines certain grounds and procedures for the seizure of land plots that are not being used for their proper purpose. In particular:

- the list of grounds for seizure of land plots has been systemized and clarified; and
- court procedure for seizure of a land plot has been further clarified, and an administrative procedure for seizure of a land plot has been introduced.

Law No. 123-FZ is of great practical significance for the industry (particularly for developers with land plots intended for farming, or residential or other building, who have not been using such land plots for three years (or other period laid down by the law)) because it systemizes and clarifies the regulatory framework in respect of the seizure of land plots.

Below, we briefly review the key provisions of Law No. 123-FZ.

Grounds for Seizure of Land Plots

The Civil Code of the Russian Federation (the “Civil Code”) sets forth the grounds for seizure of land from titleholders (*see Arts. 279-286 of the Civil Code*). The grounds for seizure of land from persons holding other rights to land (such as right of perpetual use, right of occupancy for life with the right to bequeath) are pursuant to Art. 287 of the Civil Code set forth in the Land Code of the Russian Federation (the “Land Code”) (*see Art. 45.2, Art. 54 of the Land Code*). It must be pointed out that Law No. 123-FZ does not make any changes to the procedure for the seizure of land from titleholders established by the Civil Code, but applies only to the seizure of land held under other rights governed by the Land Code.

The above grounds for seizure of a land plot by operation of law apply also for the case of a unilateral termination of a lease by a lessor (*see Art. 450 of the Civil Code, as well as Art. 46.2 as amended by Law No. 123-FZ*).

Until the adoption of Law No. 123-FZ, the grounds for the seizure of such land held under other rights were set forth in the Land Code somewhat haphazardly, in practice leading to confusion and opening up of avenues for rather broad interpretation on the part of court and regulatory authorities. Law No. 123-FZ introduced amendments to the Land Code and systematized the grounds for seizure of land, dividing them into three groups: (i) seizure in connection with improper use of a land plot; (ii) seizure for state and municipal needs and (iii) other cases envisaged by federal laws. Law No. 123-FZ also abolished such grounds for seizure of a land plot as requisitioning of a land plot and systematic failure to pay land tax.

As far as the first (and most important from the practical standpoint) category of grounds for seizure of land plots goes (i.e., improper use of a land plot), Law No. 123-FZ also brings more order and clarity to these grounds within the group than was there in the previous version of the Land Code.

Pursuant to these amendments, the following may serve as grounds for the seizure of a land plot in connection with the improper use thereof (*see Art. 45.2(1) of the Land Code as amended by Law No. 123-FZ*):

- gross violation of the rules for rational use of land (including use of a land plot for a purpose other than that for which it was designated, or if use of a land plot has a significant adverse effect on the fertility of farming land or on the environment);

- contamination of land;
- failure to carry out land reclamation and mandatory land improvement and soil conservation;
- failure to make land suitable for its intended purpose;
- failure to use a land plot intended for farming or for residential or other building for a period of three years (unless the law establishes a longer period).

Another important provision of Law No. 123-FZ is the rule that seizure of a land plot does not release a party from the duty to indemnify for losses caused by breach of land law (*see Art. 76.4 of the Land Code as amended by Law No. 123-FZ*).

Procedure for Seizure of a Land Plot

Law No. 123-FZ clarified the judicial procedure for seizure of a land plot, making it more transparent for holders of land plots. Furthermore, Law No. 123-FZ also put in place an administrative procedure for seizure of land plots.

As a general rule, a land plot that is not being used for the purpose for which it was designated may only be seized by order of a court ordaining such seizure. Law No. 123-FZ has tightened this rule and placed an obligation on the relevant authorities, prior to petitioning the court for seizure of a land plot, to conduct a check (see below).

Law No. 123-FZ introduces a new exception to the rule requiring a court order before a land plot may be seized. In respect of certain landholders, Law No. 123-FZ permits the seizure of land plots under administrative action initiated by governmental authorities or municipal bodies.¹ These landholders include state or municipal institutions and state-funded public institutions (other than state academies of science and institutions established by them and/or falling within their jurisdiction). It is worth noting that an administrative order for the seizure of a land plot may be challenged in a court of law.

The decision to petition the court for seizure of a land plot or the decision to seize a land plot by administrative order is taken by a governmental authority or municipal body (depending on the body under whose jurisdiction matters related to administration of the land plot fall). In both cases such decision must be preceded by an administrative assessment, following which the relevant regulatory authority must issue a compliance

¹ The procedure for issuing such orders will be laid down by the Russian Government. Until such time as the Russian Government establishes such procedure, land plots may only be seized by order of the court (Art. 3.23 of Federal Law No. 137-FZ dated October 25, 2001 on the Enactment of the Land Code of the Russian Federation, as amended by Law No. 123-FZ).

order (predpisaniye) for corrective action to remedy any identified breaches, indicating the period within which such action must be completed. If the breaches are not remedied, the relevant regulatory authority must forward a copy of the compliance order performance report to the governmental authority or municipal body, which issues the decision to seize the land plot by administrative order or to petition the court.

If the respective right to the land was registered in the Unified State Register of Rights to Immovable Property and Transactions Therewith (referred to as “EGRP” in Russian) (“EGRP”), then the governmental authority or municipal body must apply to the relevant regional office of the Federal Service for State Registration, Cadastre and Cartography (Rosreestr) to de-register such right within ten days after the date of the decision to seize the land or the effective date of the court order. The right is deemed to be terminated upon cancellation of the registration in EGRP.

If no record of rights to the land plot was originally made in EGRP, the details of the termination of such rights are forwarded by the governmental authority or municipal body to (i) the tax office under whose jurisdiction the land plot falls and (ii) the body responsible for the state cadastral record of immovable property and cadastral registration² within seven days from the date of the administrative decision or the effective date of the court order. In this case, the right is deemed to be terminated from the effective date of the court order to seize the land plot or from the date of the administrative order to seize the land plot (see Art. 3.25 of the Federal Law on the Enactment of the Land Code of the Russian Federation, as amended by Law No. 123-FZ).

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We would be happy to answer any questions you may have regarding the above matters.

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² Such body is, at present, Rosreestr.