

Client Update

Registration, Cadastral Record and Transactions with Parking Spaces under New Rules

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Recent changes in legislation¹ related to registration, cadastral record and transactions with parking spaces give rise to various issues that real estate market participants face in respect of the legal status and cadastral record of parking spaces.

The adopted Law on Parking Spaces was intended to resolve the issue of registration of parking spaces as separate real estate properties and filing a cadastral record in respect thereof, as well as consummation of transactions involving parking spaces.

This update address the legal status of parking spaces prior to the adoption of the Law on Parking Spaces and after it came into force on January 1, 2017 and various issues faced by real estate market participants in connection with registration, filing a cadastral record and transactions with parking spaces.

LEGAL STATUS OF PARKING SPACES PRIOR TO JANUARY 1, 2017

Prior to changes in legislation regarding the status of parking spaces, the Russian law had no definition of a parking space or any rules governing the civil law relations involving parking spaces or state registration of title thereto.

The court practice and clarifications issued by executive bodies in respect of the legal status of parking spaces supported the following principal positions:

- a parking space is treated as the common property of the building, and the title thereto is not subject to state registration; the tenancy in common ownership of a building or premises, with individual shares in

¹ Federal Law No. 315-FZ on Amendments to Part One of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation dated July 3, 2016 (the “Law on Parking Spaces”); Order No. 792 of the Ministry of Economic Development on Minimum/Maximum Dimensions of the Parking Space (the “Order on Parking Space Dimensions”).

the ownership pro rata to the size of the parking spaces situated in such buildings or premises, is what may be subject to state registration;²

- a parking space is treated as separate immovable property if it meets the criteria of separation and detachment from other premises in a building or structure,³ or a parking space is treated as the part of premises within another immovable property and may be registered as part of such immovable property;⁴
- a parking space is not treated as immovable property and cannot undergo state registration in any form.

Therefore, uncertainty in respect of the legal status of parking spaces created problems for real estate market participants in connection with various transactions (sale and purchase, lease or pledge) involving parking spaces and registration of title thereto.

NEW LAW ON PARKING SPACES: LEGAL STATUS AND RULES FOR FILING A CADASTRAL RECORD AND REGISTRATION OF PARKING SPACES AFTER JANUARY 1, 2017

Legal Status of Parking Spaces

The provisions of the Law on Parking Spaces relating to the legal status and rules for filing a cadastral record and state registration of parking spaces took effect from January 1, 2017.

Amendments have been made to Article 130 of the Civil Code of the Russian Federation to specifically provide that the parking spaces are immovable things and define those as a part of the premises intended for motor vehicles to be kept within a building or structure if the boundaries of such premises are described in accordance with the laws on the state cadastral record.

Pursuant to Article 1(29) of the Town Planning Code of the Russian Federation, the primary characteristics of the parking space are:

- *intended purpose* - the parking space may be used only for keeping motor vehicles;

² See, e.g., Ruling of the Arbitrazh Court of the Moscow Circuit No. Ф05-3747/2015, dated May 7, 2015 in Case No. А41-44784/2014; Letter No. ОГ-Д23-7475 of the Russian Ministry of Economic Development, dated May 26, 2015.

³ See, e.g., Letter No. Д23-2475 of the Russian Ministry of Economic Development, dated June 9, 2011.

⁴ See, e.g., Appellate Decision of the Supreme Court of Mary El Republic in Case No. 33-816/2016, dated May 17, 2016; Order of FAS of Moscow District No. КГ-А40/4518-08-1,2 in Case No. А40-49509/2007, dated June 30, 2008.

- *inseparability* - the parking space is a part of premises within a building or structure;
- *determined boundaries* - the parking space ought to have a cadastral record; and
- *no partitions* - the parking space ought to be free or partially free from walling or other fencing.

Rules for Filing a Cadastral Record and State Registration of Title to Parking Spaces

The Law on Parking Spaces that amends Federal Law No. 218-FZ on State Registration of Immovable Property, dated 13 July 2015 (the “Law on Registration of Immovable Property”) sets forth the following principal rules for filing a cadastral record and state registration of parking spaces:

- the location of the parking space will be indicated in a graphical form as a figure representing the boundaries of such parking space on the plan of the floor or part of the floor of a building or structure (if there is only one floor - on the plan of such building or structure); and
- the boundaries of the parking space will be specified in the project documentation of the building/structure and marked by the civil engineering or maintenance contractor or owner of such parking space, in particular, by painting, labelling or otherwise putting marks on the floor or roof.

The minimum/maximum dimensions of the parking spaces as approved by the Order on the Parking Space Dimensions are 5.3x2.5m and 6.2x3.6m, respectively.

According to the Law on Registration of Immovable Property, state registration of title and filing a cadastral record in respect of parking spaces in constructed buildings and structures may be performed simultaneously in respect of all such parking spaces if the applicant provides a technical plan of such building or structure to Rosreestr containing details required for filing a cadastral record.

TRANSITIONAL PROVISIONS IN RESPECT OF REGULATION OF RELATIONS INVOLVING PARKING SPACES AND THEIR REGISTRATION

The Law on Parking Spaces contains a number of transitional provisions regarding relations involving parking spaces and recognition of parking spaces registered prior to January 1, 2017.

- In the event of joint ownership to parking spaces, the joint owners may carve out their shares by determining the boundaries of their parking

spaces. The consent of the other joint owners will be required to carve out such shares in the form of an agreement among all joint owners or a resolution of the general meeting in respect of the use of jointly owned property. Ownership title to a parking space occurs upon its state registration, therefore, there is no need to wait until other joint owners carve out their shares and obtain registration of title. If there is no agreement among all joint owners or a resolution of the general meeting, the title to a parking space may be confirmed by court.

The property remaining upon the carve-out of shares that is required for access to the parking spaces will remain jointly owned by owners of such premises and/or parking spaces.

- If a parking space is registered as immovable property for intended use as a “parking space,” title documents do not have to be re-issued.
- If a parking space is registered as immovable property for any other intended use, the owner may file an application with Rosreestr for bringing the type of the immovable property in compliance with the current legal requirements.
- If there is no registered title or joint ownership title to a parking space, or if such parking space is a part of another immovable property, ownership title to such parking space may be registered and a cadastral record may be filed in respect of it provided that such immovable property meets the requirements for a parking space set forth in the Law on Parking Spaces.

However, if the title to buildings or structures containing properties subject to registration as parking spaces has been registered, filing of a cadastral record in respect of all parking spaces will be performed based on an application and technical plan of such buildings or structures submitted by their owner.

Where newly created parking spaces or existing parking spaces that are rearranged with their boundaries redrawn do not match the permitted parking space dimensions set forth by the Order on Parking Space Dimensions, the cadastral record and/or state registration of rights in respect of such properties will be suspended.

Pursuant to Rosreestr clarifications⁵ this provision does not apply:

- where a property that satisfies the requirements and criteria for a parking space registered prior to January 1, 2017 does not meet the dimensions requirements set forth by the Order on Parking Space Dimensions;

⁵ Letter of Rosreestr No. 14-00938 dated February 3, 2017. We note that this document is not legally binding and only provides guidance on a particular issue.

- upon state registration and/or filing a cadastral record in respect of a property that satisfies the requirements and criteria for a parking space, but
 - it is a previously recorded property; and/or
 - the title to it is considered pre-existing; or
- the project documentation for the building or structure where such newly created parking space is located was prepared prior to January 1, 2017 and the dimensions of such parking space comply with the requirements of the law in effect at the time such documentation was prepared.

Therefore, the new procedure for registration of parking spaces as separate immovable properties permits their owners to engage in various transactions (sale, lease, pledge, etc.) in their respect.

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Please do not hesitate to contact us with any questions.