

# RUSSIAN DESK

## Latest changes in the legal regulation of real estate

A number of selective but substantial amendments were made to civil and urban planning legislation at the end of 2019 and the start of 2020. They alter the concept of the good-faith purchaser, move deadlines forward, and simplify administrative barriers to obtaining permit documentation for construction. Below, we provide a brief overview of these changes which will be important first and foremost for those purchasing real estate and planning new construction or reconstruction.

### HOW THE CONCEPT OF A GOOD-FAITH PURCHASER HAS CHANGED

The amendments were made by Law No. 430-FZ dated 16 December 2019<sup>1</sup> (hereinafter “**Law No. 430-FZ**”), which entered into force on 1 January 2020. This law added text to Clause 6 of Article 8.1 of the Russian Civil Code, pursuant to which a purchaser of real estate that relies on the data of the Unified State Register of Real Estate (EGRN) when making the purchase is considered to be a good-faith purchaser, unless it can be proven in court that the purchaser knew or should have known that the seller did not have the right to make the sale.

The law’s new provision is a practical result of the principle enshrined in Article 8.1 of the Civil Code that the EGRN is reliable, and marks an interim milestone in the gradual and sometimes inconsistent development of this principle in court practice.

In essence, it follows from the new version of Clause 6 of Article 8.1 of the Civil Code that the good faith of the purchaser of a real estate property is directly based on the reliability of information on the seller taken from the EGRN: If the seller is registered as the owner of the real estate and there is no information in the register itself that its title is disputed by other parties, then the purchaser is considered to have acted in good faith. Thus, a legal presumption of the purchaser’s good faith, based on the data of the EGRN, has been introduced. In this case, good faith does not depend on the subjective relationship between the purchaser and the data of the register, i.e. whether the purchaser did in fact rely on the data, or whether it even checked the data when performing the transaction.

This presumption of good faith can only be refuted by challenging the reliability of the EGRN, i.e. challenging the registered title of the seller. This is an essential precondition (but not the only one)

in refuting the presumption of the purchaser’s good faith. Even if the seller’s title had been registered incorrectly, and the EGRN contains incorrect information in this respect, this does not per se automatically reflect negatively on the good faith of the acquisition of title. In this case, the deciding factor is whether the purchaser checked the data in the EGRN, and whether a good-faith purchaser should (and if so to what extent) on their own initiative recognise as valid the circumstances against them which were not reflected in the EGRN and which could affect its reliability.

The principles of the public accessibility and reliability of the EGRN, enshrined in Article 8.1 of the Civil Code, are evidence that such obligations of the purchaser should be kept to a minimum. As a mandatory condition of due diligence, one could make it necessary to obtain current information from the EGRN on the seller’s title. During a check of this information, the fact that the seller does not hold title or that the title is disputed could be identified. Other suspicious circumstances could randomly come to be known by the purchaser, or could be obvious from the terms of the transaction (for example, a clearly below-market price for no particular reason, the urgency of the transaction, etc.). In this case, the purchaser as a reasonable participant in legal affairs should know or at least suspect that there is something amiss with their counterparty’s behavior. In any case, such circumstances should be evident for the purchaser; any other approach would move the purchaser’s knowledge of the real estate being purchased away from the information in the EGRN, and would blur the legal meaning of the reliability of the EGRN.

Accordingly, in connection with this it is also of great importance whether the purchaser is a professional market participant. This is obviously applicable to legal market participants that regularly

<sup>1</sup> Federal Law No. 430-FZ dated 16 December 2019 “On Amending Part One of the Civil Code of the Russian Federation”.

carry out real estate transactions (for example, developers), but also, as court practice shows, to entrepreneurs. Therefore, it cannot be ruled out that the boundaries of due diligence as a condition for being considered a good-faith purchaser will be expanded. The application of the new version of Clause 6 of Article 8.1 of the Civil Code will thus strongly depend on how court practice takes shape.

### AMENDMENTS RELATED TO ACQUISITIVE PRESCRIPTION

Law No. 430-FZ also made changes to Clause 4 of Article 234 of the Russian Civil Code. Acquisitive prescription requires good-faith, public, and continuous possession of real estate as property for a period of 15 years. This period begins not earlier than the expiration of the term of the statute of limitations for a petition to reclaim an asset from unlawful possession by another; in other words, it is in fact 18 years from the time when the owner learned or should have learned that their rights were being violated, and against whom to file a claim to protect these rights.

Under the new version, the term of acquisitive prescription for assets held by a party from whose possession they may be requisitioned is reckoned from the date when the asset passes into the open possession of a good-faith purchaser. In the event the title of a good-faith purchaser of a real estate property which is held openly was registered, then this period begins not later than the time of state registration of title.

Thus, these periods were shortened. A party who has possessed real estate for a long time may acquire the title to it more quickly based on acquisitive prescription, provided that all the other elements of acquisitive prescription are given.

Law No. 430-FZ has also established certain rules concerning the reclamation of housing from a good-faith purchaser and the period of acquisitive prescription for such real estate purchasers.

### AMENDMENTS TO URBAN PLANNING LEGISLATION

Another law on amendments, Law No. 472-FZ<sup>2</sup> (hereinafter “**Law No. 472-FZ**”), introduced a number of amendments to the Urban Planning Code (UPC) of the Russian Federation, primarily concerning the periods and methods of receiving approvals and permits for construction. The amendments have been in force since 28 December 2019.

#### Periods for receiving permit documentation

Law No. 472-FZ shortened the periods for receiving the following permits and other documents required for construction:

N°	Document	Previous period for receipt	New period for receipt
1.	Urban development plan (UDP) of a land plot	20 business days	14 business days
2.	Construction permit (initial)	7 business days	5 business days
3.	Construction permit (with amendments)	7 business days	5 business days
4.	Commissioning permit	7 business days	5 business days
5.	Technical specifications for connection of a capital construction facility to utilities networks	14 business days	7 business days

#### New possibilities for electronic document management

Law No. 472-FZ stipulates that some documents can be obtained in electronic form if explicitly indicated in the application. These documents include the construction permit, the decision on amending or refusing to amend a construction permit, the commissioning permit, and the UDP of a land plot.

Applications for permits for conditionally authorised types of use, on the provision of permits to deviate from the maximum parameters of authorised construction or reconstruction of capital construction facilities, and on the issue of a UDP of a land plot may also be submitted electronically.

#### Changes to the construction or reconstruction of linear infrastructure

In general, the construction and reconstruction of linear infrastructure will be simplified through several innovations. Pursuant to the Russian UPC, linear infrastructure includes electrical power lines, communications lines (including cable lines and facilities), pipelines, motorways, railway lines, and other similar structures<sup>3</sup>. For example, additional approvals do not need to be received and public discussions and hearings do not need to be held to make changes to a land use plan (LUP) stipulating the construction or reconstruction of linear infrastructure, provided that these amendments:

- stipulate a change in the area of the planned site of the linear infrastructure and/or the capital construction facility included in the linear infrastructure by at least 10 per cent;
- are related to the need to clarify the boundaries of the planned site of the aforementioned infrastructure facilities; and

<sup>2</sup> Federal Law No. 472-FZ dated 27 December 2019 “On Amending the Urban Planning Code of the Russian Federation and Certain Legislative Acts of the Russian Federation”.

<sup>3</sup> Clause 10.1) of the Russian UPC.

- will not impact the design decisions stipulated by the LUP and will not require the expropriation of land plots and/or the real estate assets located on them for state or municipal needs.

In addition, the design documentation of linear infrastructure can be drafted prior to the approval of the site planning documentation stipulating its construction or reconstruction. The construction or reconstruction of linear infrastructure or the facilities that make up the infrastructure may be divided into stages by decision of the developer or the technical authority after receiving the construction permit for the facility by making amendments to the design documentation of this facility (these facilities).

#### Change to the construction of facilities in Moscow

Law No. 472-FZ also introduced amendments to the Law on the Status of the Capital City<sup>4</sup>, pursuant to which a permit for the construction of a facility of regional importance in Moscow can be issued prior to the formation of the land plots based on an approved area demarcation plan or a layout diagram of the site on the cadastral map in those cases when the land plot(s):

- is (are) formed from land owned by the city of Moscow or publicly owned unallocated land;
- is (are) not subject to expropriation for state or municipal needs; and
- is (are) not encumbered with third-party rights (other than easements or public easements).

Similarly, Law No. 472-FZ introduced amendments to the Law on the Entry into Force of the Urban Planning Code<sup>5</sup> making it possible for the developer to send the design documentation and the results of engineering surveys on a real estate asset to the government administration of Moscow for state expert examination if:

- the construction or reconstruction of a real estate asset is to be performed in the territory of two or more constituent entities of the Russian Federation, one of which is the city of Moscow; and
- the state expert examination of the design documentation of this real estate asset has not been assigned to the competence of the Russian Federation on other grounds stipulated by the legislation on urban planning activity.



#### Falk Tischendorf

Attorney-at-law | Partner  
Head of Moscow office  
BEITEN BURKHARDT Moscow  
E-mail: Falk.Tischendorf@bblaw.com



#### Kamil Karibov

Lawyer | Ph.D. | Partner  
BEITEN BURKHARDT Moscow  
E-mail: Kamil.Karibov@bblaw.com



#### Ekaterina Sidenko

Lawyer | LL.M. | Associate  
BEITEN BURKHARDT Moscow  
E-mail: Ekaterina.Sidenko@bblaw.com

<sup>4</sup> Law No. 4802-1 of the Russian Federation dated 15 April 1993 "On the Status of the Capital City of the Russian Federation".

<sup>5</sup> Federal Law No. 191-FZ of the Russian Federation dated 29 December 2004 "On the Entry into Force of the Urban Planning Code of the Russian Federation".

## Imprint

This publication is issued by

### **BEITEN BURKHARDT**

Rechtsanwaltsgesellschaft mbH

Ganghoferstrasse 33 | D-80339 Munich

Registered under HR B 155350 at the Regional Court Munich/

VAT Reg. No.: DE811218811

For more information see:

<https://www.beiten-burkhardt.com/en/imprint>

### **EDITOR IN CHARGE**

Kamil Karibov

Ekaterina Sidenko

© BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH.

All rights reserved 2020.

### **PLEASE NOTE**

This publication cannot replace consultation with a trained legal professional. If you no longer wish to receive this newsletter, you can unsubscribe at any time by e-mail (please send an e-mail with the heading "Unsubscribe" to [newsletter@bblaw.com](mailto:newsletter@bblaw.com)) or any other declaration made to BEITEN BURKHARDT.

## YOUR CONTACTS

### **MOSCOW**

Turchaninov Per. 6/2 | 119034 Moscow

Falk Tischendorf

Tel.: +7 495 2329635 | Fax: +7 495 2329633

[Falk.Tischendorf@bblaw.com](mailto:Falk.Tischendorf@bblaw.com)

### **ST. PETERSBURG**

Marata Str. 47-49 | Lit. A | Office 402 | 191002 St. Petersburg

Natalia Wilke

Tel.: +7 812 4496000 | Fax: +7 812 4496001

[Natalia.Wilke@bblaw.com](mailto:Natalia.Wilke@bblaw.com)