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## REGULATION OF TURNOVER OF THE LAND PLOT AND OTHER REAL ESTATE LOCATIONS

**Abstract:** In this article it is described that the sufficient economic and legal basis for strengthening by law the concept of "single object of real property" as a single object of civil rights in civil law and a common object in civil proceedings. The author emphasizes that this does not legally mean that the land plot and the building located on it should be completely separated from each other and be independent. On the contrary, for the normal use of real estate and to regulate the transaction, a person who owns real estate located on someone else's land plot has a certain right (material or obligation) in respect of this land plot that allows him and his authorized persons to fully use the property belonging to him. ) and the ability to freely transfer this real estate to another person, occurrence of rights for use of real estate transferred to him in relation to the land plot is very important.

**Key words:** Real estate, land plots, legal regime of property, property rights, right of management, operative management right, servitude, right of whole life possession, right of lease, privileges.

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### Introduction

#### 1-§. Status of the current legislation

The current legislation is full of internal contradictions in regulating the ownership of land plots and buildings or structures, other real estate objects, as well as the regulation of the circulation of these real estate objects, because such objects are considered, on the one hand, as objects that can be independently and independently involved in the transaction, different legal regimes can be established, and, on the other hand - as types of real estate that are physically and legally interconnected.

Civil legislation in the field of regulation of property rights to real estate and their treatment includes:

1) material rights that may arise in relation to buildings (property rights, economic management rights, operational management rights, servitude) and land plots (property rights, permanent (indefinite) use

rights, the right of lifelong ownership of the inherited land plot, servitude), significant differences in scope. Such differences prevent the creation of a single mode of circulation of the specified objects;

2) According to norms of the Civil Code, owners of buildings located on land owned by the state and municipal property have the right to permanent (indefinite) use of the land, unless otherwise provided by law or contract (Article 165 of the Civil Code), but according to the Land Code, the range of persons who can own and possess (receive) land plots with the specified property rights is limited;

3) the existing differences in the legal regulation of the treatment of land and buildings are not justified: the civil legislation establishes special rules (purchase, sale, lease) for such transactions with buildings, structures and other real estate located on the land, the land itself is not a free object of civil treatment;

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4) regulation of the circulation of land plots and buildings located on them is consistent and not free from contradictions.

### 2-§. Offers on strengthening the current legislation

At present time, there are insufficient economic and legal grounds to strengthen in law the notion of a single object of civil rights and “a common object of real property” as a common object in civil law. This does not legally mean that the plot of land and the building on it should be completely separated and independent of each other. On the contrary, for the normal use of the real estate and to regulate the transaction, a person who owns real estate located on someone's land plot has a certain right (material or obligation) in respect of this land plot that allows him and his authorized persons to fully use the property belonging to him and the ability to freely transfer this real estate to another person, allows the buyer of real estate to use the real property transferred to him in relation to the land plot an occurrence of human rights is very important. Otherwise, a legally constructed building, but later on someone's land plot, will have the same fate as a building built arbitrarily without the owner having any right to the land plot, resulting in negative consequences for the building built arbitrarily in the current legislation (Article 212 of the Civil Code). Even in cases where the land plot and the real estate objects located on it belong to the same person, a rule should be established that according to it, although the land plot and the objects located on it are not considered as the sole object of civil rights, in civil proceedings, the building or land plot in the case of a transfer to another person, they must act together. In this sense, the idea of a "single object" is justified. What is the main thing and what is the relevant thing? It is necessary to find an answer to the question and, accordingly, to refrain from trying to decide which object will follow which other object. It does not matter which object - building or plot of land is intended to be transferred to another person, the rule that one can't be transferred to another without another should apply in both cases, because it is important to determine that such objects can only be transferred to another person together. In this case, the content of the "single object" legal regime is determined not by the fact that the property belongs to the main object, but by the fact that the legal relationship between the land and the building on it can't be broken, they must pass from one person to another together and simultaneously.

In general, the principle of "single fate" of land and real estate located in it should be consistently implemented in civil law by creating a legal regulation that allows the owner of the building to use the land on which the building is located within any material or obligation institution. If the owner of the building

and the owner of the land plot are one person, then their "separation" is not allowed (except in cases directly provided by law).

### 3-§. Circulation of buildings and structures located on someone's land plot

The owner of the building located on the land plot belonging to another person has the right to freely dispose of the land plot on which the building is located without the consent of its owner, and this should be established as a basic principle of civil law. The principle of freedom of the owner of the building to dispose of his rights to the land plot is a reflection of the principle that the owner of the land plot can freely dispose of the land plot without the consent of the owner of the premises located on it. When strengthening the right of the owner of the building to freely dispose of this property:

1) it is established that the owner has no right to transfer both his rights for the land plot and the building to another person;

2) a procedure that allows the owner of the building located on someone's land plot to freely dispose of their rights to the land plot: but has the right to transfer it to another person with prior notice (such a decision requires the consent of the lessor to re-lease under Article 545 of the Civil Code) is the general rule about the need for change, as well as free use of the provisions of the Treaty on the Civil filled with the appropriate norms); if the right of owner to the land plot can't be transferred to another person (for example, if one of several buildings possessed by the owner is transferred to another person), the owner has the right to: or (I) dispose of the building together with the rights under the lease agreement (sale, pledge); in which case he, as the owner of the remaining buildings, shall have the right to possess and use the land plot in a limited way, or (II) retain the right of the lessee as the owner of the remaining buildings; in this case the right of limited possession and use of the above-mentioned land plot arises in the buyer of the building, or (III) if it is possible to divide the leased land plot, the lease agreement is terminated by agreement with the landlord and the land is divided by the owner then several lease agreements are concluded, which deprive the owner of the premises of the right to dispose of one or more of them and to transfer the rights of the lessee of the land plot to a particular building (premises) renounce in favor of the person.

### 4-§. The right of limited ownership of the land plot

For all cases where the right of ownership for the land plot and the building on which it belongs to different persons, and the owner of the building does not have any other material right or obligation to use

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the land plot for one reason or another, such right to the building owner is new to civil law. In our opinion, it would be appropriate to provide for the introduction of a limited property right in this Concept, conditionally called the “right of limited possession of the land plot”. The need to introduce a separate property right arising from the law is based on the fact that when giving his land to another person for construction on the right of one or another property right or obligation, the owner of the land thus undertakes to provide access to this person and subsequent owners of the building. A similar obligation must be assumed by the owner when transferring the building to another person and retaining the right of ownership over the land plot.

In the course of civil proceedings, if the right of ownership of a building is not “strengthened” by any right to the land on which the building is located, the owner of the building is given “limited ownership” of the land in accordance with the law. This right can’t be used if the land plot is given for the construction of a building, because in this case, first, the right can’t arise spontaneously, the owner of the land plot and the future owner of the building must agree on the right and its terms; secondly, the right of limited possession arises in respect of the land plot of the existing building owner, the right to the land plot in connection with the construction of the building arises until the building is actually built and someone’s property right arises to it.

The right of limited possession must be structured in such a way that it becomes a substantive right that restricts the right of the owner of the land plot to possess and use it as little as possible. This property right must allow the owner of the land plot to exercise the powers of ownership and use of the land plot at the same time as the owner of the building exercises the powers of ownership and use of the land plot. The “balance of interests” achieved between the parties with respect to the land plot must be maintained for a limited period of possession and may be changed only by agreement between the owner of the building and the owner of the plot, but not at the request of one of them. This means that if the owner of the building wishes to change the permitted use or to reconstruct the building in a way that requires an “extension” of his limited tenure, the possibility of changing the permitted use or renovating the building is subject to agreement with the landowner should rotate. Similarly, if the owner of the land plot wants to change the purpose of using the land plot, the rights of the building owner to the land plot can’t be unreasonably violated.

Limited ownership is not included in the list of land servitudes as a separate property right, because its owner acquires the right of ownership in addition to the right of use in relation to someone’s land (the rest of the land in relation to the part of the land owned by him) to the extent necessary to be used for the

purpose of servicing the real estate to which it belongs). At the same time, the law provides for a limited use of real property belonging to its owner under the servitude, and there is an element of possession only in certain types of servitude rights. One or more types of “use” of land plots - the right of transition, the right of participation, the right of limited access to water, in contrast to the servitude, allows its owner to perform all the actions necessary for the use of the building in relation to the land and it is not possible to clearly define the scope of such actions.

Thus, the right of possession in a limited way according to the composition of the powers of the right holder is a broader right than the servitude. To determine the nature of this right, certain usufruct (personal servitude), saprophytic and emphysema constructions from Roman law can’t be used, as they give a person who is not the owner of the land a wide range of rights, including the right to receive fruits and income from the land, restricts the owner's right to own and use the land plot to such an extent that the owner of the land plot is entitled to the “dry title”. Such “distribution” of rights to land does not correspond to the nature of the relationship between the owner of the building and the land in the current case.

The fact that the right to impose an obligation on the land plot arises in accordance with the law is not alien to civil law. In civil law, for example, a means of imposing an obligation on real property is considered in accordance with the law - a mortgage (Article 264 of the Civil Code). Although the mortgage is not mentioned in the Civil Code as a property right and is regulated in the section on obligations, it is of a dual nature and is included in the list of property rights in some legal procedures.

It is also possible and legally justified to have a limited property right to the land plot in accordance with the law. The right of limited possession may exist along with other rights of third parties to the land plot, in particular, the right of pledge to the land plot, and the right of limited possession shall be retained if the land plot is transferred to another person in the order of foreclosure.

The right of limited possession does not preclude the owner of the building from acquiring any other material right or obligation right to the land plot belonging to him at any time; in which case the right of limited possession is revoked, but then, if the other right of the owner of the building to the land is revoked, it re-emerges.

The main features of the right of limited possession can be described as follows:

a) this right to the land plot is established only in cases specified by law, if the owner of the building has no other rights to the land plot on which the building belongs; in which case only the owner of the building may be a subject of the right of limited possession,

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possession of the building by any other right shall not give rise to this right;

b) the right of limited possession is established in relation to the whole land plot, not to any part of the land plot on which the building is located;

c) this right includes the right to use the land plot on which the building is located only to the extent necessary for the use of the building, by both the owner and the person authorized by him (as well as the right to own it); in this case, the rights of the owner of the land plot may not be imposed more than the level necessary for the use of the building;

g) limited ownership is payable, the payment rates should be equal to the land tax, but these rates are applied only by agreement of the parties or by court decision without determining the amount of other payments (this amount can be reduced or increased compared to land tax rates) ;

d) the owner of the building and the owner of the land plot have the right to determine and clarify the terms of possession and use of the land plot, including changes in the amount of payment. In this case, certain conditions of limited possession must not contradict the purpose of use of the land plot and correspond to the purpose of use of the building established in accordance with the legislation. The terms of limited ownership may be reconsidered by the parties if the purpose of use of the building is changed or reconstructed by agreement, as well as if the purpose of use of the land plot is changed;

e) at the request of the owner of the building or the owner of the land plot, the court has the right to

determine and clarify the terms of limited possession, including changes in the amount of payment;

j) the right of limited possession is terminated when the owner of the building acquires another right (property right or obligation right) to the land plot on which the building is located. The right of the owner of the building to possess in a limited way from the moment of termination of the other right to the land plot is re-established in another volume if there is a change of the corresponding rights in the volume or objects existing on the date of its termination. All the provisions on the right of limited possession of the re-created right, including the possibility of reaching an agreement on changing its terms and appealing to the court to change its terms, shall apply;

h) the right of limited possession is terminated from the moment when the existence of the building as an object of civil rights is terminated (as a result of demolition of the building, etc.). In certain cases, for example, if the owner of the damaged building refuses to apply to the registration authority and therefore his property rights are not revoked, the owner of the land plot should be given the right to apply to the registration authority;

i) this right may be revoked if the land plot is compulsorily withdrawn for state and municipal needs and as a result the building is purchased; the right of limited possession is also revoked in case of withdrawal of the land plot for other purposes or in connection with violation of the legislation. These features of the right of limited possession shall be duly enshrined in law.

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