Legal aspects of regulation of real estate services in the real estate market

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Abstract. Legal regulation of realtors activities in the provision of services in the real estate market is an urgent need, a problem facing the Russian legislator. The current system of voluntary certification of real estate services, unfortunately, is not enough for effective regulation of real estate activities, protection of the rights and legitimate interests of consumers real estate services.

1 Introduction

Special laws devoted exclusively to real estate activities have not been adopted at the moment. This situation gives rise to a lot of problems, ranging from a variety of violations of the rights of individuals and legal entities and ending with the lack of qualitative changes in the real estate market, accompanied by a decrease in the level of legal culture of its participants.

Real estate activity is characterized by certain problems. The departure of the state from the licensing policy as a kind of control over the professionalism of persons providing real estate services has significantly reduced the range of guarantees that ensure the proper implementation of real estate activities and the protection of its subjects. [1] [2] [3]

Mechanisms equivalent to licensing are not well developed. Self-regulatory organizations as one of the options for the organization and at the same time legal control over the implementation of real estate activities have not yet received legislative consolidation. Their status, the main activities, the order of...
admission to the structure, ways of regulation of business relations and many other things are not defined.

2 Materials and Methods

The current Russian legislation is quite enough provisions regulating real estate (mediation, Agency) activities, for example: Chapter 49, 50, 51 and 52 of the civil code. For fight against criminals in this sphere of provisions of the criminal code of the Russian Federation of 13.06.1996 N 63-FZ (edition of 04.03.2013) // NW of the Russian Federation. - 1996. - № 25. - St. 2954. and the code of administrative offences code of the Russian Federation on administrative offences" dated 30.12.2001 T 195-FZ (as amended on 23.02.2013) (Rev. and EXT., with effect from 01.04.2013) // Sz the Russian Federation. - 2002. - N 1 (part 1). - St. 1. too short.

However, there is an urgent need to adopt a series of legal acts that can determine the order of the organization of real estate activities, additional mechanisms to protect the rights and legitimate interests of its participants, as well as to place emphasis on which the state will focus in the further reform of the economy.

Among the main legal problems that accompany the activities of the realtor can be called:

The undeveloped concept of the specifics of the intermediary services of the realtor.

The presence of a plurality of civil contracts, mediating real estate activity, entailing the inevitable application in judicial practice to real estate services rules on the mixed contract. This agreement on the actual mediation with their substitutes in the civil code, such as a contract for the provision of the services of the actual character the Agency agreement, c it differs from the simple sum of the elements of the actual services (Chapter 39 of the civil code) and legal nature (CH. 49, 51 of the civil code): reservations about the exclusivity and the characteristics of the termination.

The problem of using the model of the Commission agreement in transactions with real estate. Contract for the provision of information services by the realtor: the limits of verification by the realtor of information about the property.

The problem of remuneration of the realtor dependence (or independence) on the achievement of the result (the transaction, the selection of a suitable option). methods for determining the remuneration: percentage of the transaction, etc.;

Responsibility of the realtor for improper performance of the contract;
No professional liability insurance of the realtor.

Practice shows that realtors draw up their legal relations with clients, as a rule, in the form of an Agency agreement with minimized responsibility.

The main practical activity of real estate firms is advising the parties on the preparation of the transaction and physical support of the parties during the transaction, state registration of rights, as well as settlements between the parties. The parties enter into legal relations independently, and accordingly, in the event of further disagreements between the seller and the buyer, realtors remain aloof. They cannot be prosecuted as a third party. Most Russians currently prefer to make transactions with housing with the active assistance of real estate agencies that undertake to "accompany" the transaction in the registration authorities, to ensure its "legal purity", etc. However, such obligations are not always fulfilled.

Legal regulation of contractual obligations to provide real estate services should be carried out as follows: General legal regulation - the Civil code of the Russian Federation, and special regulation - on the basis of the adoption of the Federal law "On real estate activity in the Russian Federation".

The resolution of the State Duma of the Federal Assembly of the Russian Federation of May 14, 1998 No. 2441 - GD was adopted in the first reading the draft Federal law "On real estate activity in the Russian Federation", other times it attempted to regulate these relations by the Resolution of the State Duma of the Federal Assembly of the Russian Federation dated 25.01.2001 № 1084 - GD "draft Federal law "On real estate activity in the Russian Federation" Resolution of the State Duma of the Federal Assembly of the Russian Federation dated 25.01.2001 № 1084 - GD "draft Federal law "On real estate activity in the Russian Federation" // Sz the Russian Federation. - 2001. - № 6. - St. 540. for the third time - Postanovleniem the State Duma of the Federal Assembly of the Russian Federation dated 08.02.2002, No. 2438 - GD "draft Federal law No. 71948-3 "On real estate activity in the Russian Federation" Resolution of the State Duma of the Federal Assembly of the Russian Federation dated 08.02.2002 No. 2438 state Duma "On the draft Federal law N 71948-3 "On real estate activity in the Russian Federation" // Sz the Russian Federation. - 2002. - № 7. - St. 665.

However, until now there is no law regulating this type of activity. The main conceptual idea in the development of this law should be the idea of regulating relations arising in connection with the provision of real estate services from the position of their consumers. Most of the services provided by realtors are of particular importance because of their direct connection with the transfer of rights to real estate.

Should be fixed in the Federal law "On real estate activity in the Russian Federation" the definition of a contract of real estate activity and its constitutive
features that will allow you to select the contract from the mass of homogeneous contracts of paid rendering of services. Compliance with such criteria should be a prerequisite for the application of the provisions of the Federal Law "On real estate activity in the Russian Federation" to a specific contract. It is proposed to introduce the following definition of the contract for the provision of real estate services: "Under the contract for the provision of real estate services, the contractor (realtor) undertakes on the instructions of the customer (consumer) to provide services in civil transactions with real estate objects and rights to them in the real estate market, and the customer (consumer) undertakes to pay for these services.

3 Results

Accordingly, we can distinguish the features that make up the essence of the contract for the provision of real estate services:

1) the subject of the contract are the services provided in the course of civil transactions with real estate objects and the rights to them in the real estate market, including the acquisition, sale and exchange of real estate in accordance with applicable law;

2) parties to the agreement are a commercial organization, individual entrepreneur carrying out continually or systematically mediation of entrepreneurial activity on rendering of realtor services and user (individual or legal entity) who purchase the services provided;

3) this contract is supposed to be concluded, first of all, in the interests of the consumer, since it is made "at the expense" of the consumer.

The adoption of the Federal Law "On real estate activity in the Russian Federation" raises the question of the introduction of compulsory licensing of real estate activity, which was canceled in 2002. The Author notes that the problem of compulsory licensing of real estate activity is currently debatable. Criticizing the views of opponents of licensing, the author argues that the introduction of compulsory licensing of real estate activities can coexist harmoniously with the system of voluntary certification of services in the real estate market, because licensing, in contrast to voluntary certification of real estate activity, is aimed at ensuring a unified state policy for the protection of the rights of citizens and legal entities, their legitimate interests, in the sphere of services provided by realtors, and will create additional mechanisms for regulating entrepreneurial activity in order to exclude unfair entrepreneurship in the real estate market.
Licensing of real estate activities should be carried out by the Federal Executive body - the Ministry of Finance of the Russian Federation in accordance with the current Federal Law "On licensing of certain activities", and the peculiarities of licensing are reflected in the Regulation on licensing of real estate activities approved by the Government of the Russian Federation.

The Russian Guild of realtors has taken the initiative to develop a system for regulating the activities of realtors - within the framework of the system of voluntary certification of services - certification of services in the real estate market of the Russian Federation. Joint work of representatives of more than 50 regions of Russia yielded results - the State standard uniform for all regions which was brought in the current register of Gosstandart of Russia under the identification stamp "ROSS RU No. I046 was developed. 04 PH00". This standard of certification of services in contrast to the state licensing of real estate activity was recognized as voluntary and was intended for real estate firms, which considers its level of work so high that they can meet the standard. Standardization of realtors - one of the ways of self-regulation of real estate activity. Thus, the Russian Guild of realtors was the pioneer of certification of services at that time.

Mandatory conditions for obtaining a license should be the certification of specialists engaged in real estate activity, and insurance of professional liability of realtors by concluding an insurance contract for a particular type of real estate activity or a contract for the provision of real estate services, which should also be enshrined in the Federal law "On real estate activity in the Russian Federation".

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4 Discussion

Today, the real estate market is such a situation that almost anyone can call themselves a realtor, which causes irreparable damage to the profession. Recently, cases of fraud have become more frequent, when some pseudo-agents are trying to impose their services on citizens.

Thus, at present there are certain problems in the sphere of legal regulation, which have a negative impact on the development of the market of real estate
services. One of the ways to overcome the problems is the adoption of the law "On real estate activity in the Russian Federation", where the main provisions relating to the provision of real estate services will be fixed, in particular, the basic terms, conditions, responsibility, etc. This law is necessary in order to protect consumers in the provision of real estate services.

Real estate activity appeared in Russia together with the emergence of market relations, and today the real estate market has become not only one of the most important sectors of the Russian economy, but also, being closely connected with the housing problem of the majority of the population, has acquired great social importance. However, the legal status and basis of functioning of real estate companies and individual realtors have a rather superficial regulation.

Real estate activity - is mediation in the Commission of legal actions (the conclusion of certain civil transactions), the meaning of which is to obtain a party to the property turnover (seller or buyer) the ability to act as a party to the transaction through an authorized person (real estate company). Activity on rendering realtor services can be made as on the basis of the agreement of paid rendering of services (Chapter 39 of the civil code), on the basis of the order agreement (Chapter 49 of the civil code), on the basis of the Commission agreement (Chapter 51 of the civil code), on the basis of the Agency agreement (Chapter 52 of the civil code). In this case, the intermediary (attorney or Commission agent), acting on behalf of someone else (order agreement) or on its own (Commission agreement) behalf, in the interests of others, ultimately creates, changes or terminates certain rights or obligations for its client (principal or committen). Real estate agencies, carrying out their activities, conclude various contracts for the provision of services. These may be contracts for paid services (Chapter 39 of the civil code), Agency agreement (Chapter 52 of the civil code), accordingly, the essential terms of the contract will depend on the content of the essential terms of the above contracts. The legislation of the Russian Federation does not contain requirements concerning the form of the contract on rendering realtor services therefore in this case General provisions of the civil legislation concerning the form of transactions should be applied. according to § 1 "Concept, types and form of transactions" Chapter 9 of the civil code contracts for the provision of real estate services must be made in writing.

5 Conclusion

The legal basis for the relations between artists and consumers of real estate services set mainly by the Civil code of the Russian Federation in the framework of the provisions on contracts of sale, lease, trust management, Agency, etc., and
the RF Law "On protection of consumer rights". Based on the legal definitions of types of contracts in the Civil code in real estate activity there are two main types of contracts: the contract of paid services (as information services legislator referred to this type of contract) and the contract of assignment in the provision of services for the legal registration of the transaction.

The civil legislation also does not contain requirements concerning obligatory conditions of the contract on rendering realtor services therefore the realtor has the right to develop independently conditions of contracts for performance of separate types of realtor services (implementation of separate types of realtor activity) and to offer them to acceptance to consumers by accession to the offered contracts as a whole.

Depending on the characteristics of the services provided, each contract has its own distinctive features. Organizations engaged in real estate activities are important subjects of market infrastructure, which are business organizations, the main purpose of which is to systematically profit. The lack of Russian real estate firms extensive experience leads to difficulties in the functioning of domestic real estate organizations.

It should also be noted the imperfection of the regulatory framework for the creation and functioning of real estate organizations in Russia; the lack of institutions of state regulation and co-regulation leads to a number of negative trends in the development of the real estate market, manifested in the low "transparency" of transactions, the spread of corruption and the development of "shadow" structures, insufficient quality of mediation services, which prevents the stabilization of prices in the real estate market and reduces the efficiency of its functioning. One of the ways to overcome the problems is the adoption of the law "On real estate activity in the Russian Federation", where the main provisions relating to the provision of real estate services will be fixed, in particular, the basic terms, conditions, responsibility, etc. This law is necessary in order to protect consumers in the provision of real estate services.

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