Problems of Maintaining of Real Estate Cadastre as Exemplified by Cadastral Registration of Allotment Cottages

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Abstract. Gardening is traditionally widespread in Russia. As of 2018, there were 180,612 allotment gardens in Voronezh Oblast. The area of land of horticultural non-commercial associations of citizens that were objects of agricultural census was 19563.8 hectares. The field of cadastral registration of buildings on allotment garden plots certainly inherits the general problems of maintaining the real estate register. In this area there are also problems associated with the difficulties of classifying real estate objects within cadastral registration and problems of reliability and completeness of information contained in the Unified State Register of Immovable Property (EGRN), as well as problems related to updating the EGRN data and correcting errors of various origins. The notion of allotment garden plot, as well as allotment cottage, has changed several times in recent decades. The latest changes in the status of allotment cottages occurred in 2019, so the evolution of the notion of allotment cottage may not be complete yet. At the same time, the problems of classifying real estate objects are also relevant in the field of cadastral registration of allotment cottages, since errors in the classification of real estate objects are one of the factors in the emergence of register errors and consequent input of inaccurate information in the EGRN. Thus, the issues of classifying real estate objects in the case of buildings located on allotment garden plots are of particular relevance. The solution of these issues directly determines whether this object is subject to cadastral registration and influences the calculation of cadastral value of the building. At the same time, in the particular case of allotment cottages the line between different classification groups in regulatory legal acts is blurred, which complicates the cadastral registration procedure.

1. Introduction
According to Article 61 of Federal Law “On State Registration of Real Estate” [14], there are two types of errors in the real estate register, i.e. technical and register errors. Technical errors are errors made by the registration authority when transferring the relevant information into the EGRN from the documents submitted for cadastral registration and registration of rights, which results in a discrepancy between the information entered in the register and the information contained in the provided documents. Register errors are associated with the reproduction of errors contained in the documents submitted for cadastral registration and made by a cadastral engineer or other person.

Inaccurate information obtained as a result of technical or register errors can be of the following types:

- incorrect description of information about an immovable property object;
incorrect description of information about a legal entity;
incorrect description of information about rights, restrictions on rights and encumbrances of
real estate objects [19].

Attention should also be paid to a special case of register errors, i.e., errors associated with the
reproduction of incorrect data in the documents submitted for cadastral registration and made by a
cadastral engineer or other person. A number of register errors are related to deficiencies in legislation
regarding the classification of real estate objects. In this case a cadastral engineer might make a
mistake in certain characteristics of a real estate object due to the lack of precise criteria for classifying
real estate objects in regulatory legal acts, as well as insufficient elaboration of the conceptual
apparatus in the field of cadastral registration.

2. Results and discussion
In the case of allotment cottages, practice poses several tasks for the persons, who perform cadastral
work to classify real estate objects:
1) to determine whether the building is an immovable thing and whether it falls within the
definition provided in the Civil Code [2];
2) to determine whether the building is an allotment cottage or a residential house [9].

In the first task the determination of status of buildings on allotment garden plots is complicated by
problems related to the deficiencies in the conceptual apparatus of land legislation associated with the
definition of an immovable thing. According to the Civil Code, to the immovables (the immovable
property, realty) shall be referred the land plots, the land plots with mineral deposits and everything
else, which is closely connected with the land, i.e., such objects as cannot be shifted without causing
an enormous damage to their purpose, including the buildings and all kind of structures, and objects of
incomplete construction [2].

Despite the fact that due to their design features some buildings located on allotment garden plots
can be shifted at short distances without significant damage, it is also necessary to refer to their
functional purpose and take into account whether the owner purchased an allotment cottage or some
temporary structure. However, for the purposes of cadastral registration of allotment cottages this
criterion cannot be considered a truly classification criterion, since it requires taking into account the
individual characteristics of the building in each specific case, which in turn is problematic to be
formalized in the form of specific legislative norms and also depends on the good faith of the owner
[20].

The definition of immovables in Article 130 of the Civil Code of the Russian Federation cannot be
considered complete and exhaustive, since it ignores a number of important parameters inherent to an
immovable thing, which in turn leads to difficulties in law enforcement. Such criteria of immovables
as close connection with the land and the impossibility of shifting them without significant damage to
their purpose are extremely vague. The question of whether the building is a real estate object and,
therefore, whether it is subject to cadastral registration can be considered one of the primary issues
in the practical conduct of cadastral registration. The ability to answer this question is inextricably
associated with the elaboration of the classification criteria in regulatory legal acts [2, 3, 4]. The lack
of a clear definition of immovables leads to the fact that some of real estate objects actually used as
allotment cottages are not considered as objects of cadastral registration. This situation reduces the
reliability of data contained in the real estate register.

There is no consensus among researchers on how to clarify the definition of immovables in order to
eliminate the current issue. One of the ways is to clarify the definition of immovables in such a way
that an immovable property closely connected with the land should meet a number of additional
criteria: the building is intended for indefinite or long-term use; real estate development has a legal
basis; the object possesses useful properties that can be utilized independently from the land plot on
which this object is located; it is impossible to shift the object without compromising its purpose [5, 7,
10, 15-18].
In terms of classification of capital construction objects located precisely on allotment garden plots an important point is the essence of the notion of allotment cottage. The notion of allotment cottage, as well as the closely related notion of allotment garden plot, has undergone significant changes in legislation over the past 30 years.

The resulting legal uncertainty is intended to be eliminated by Federal Law No. 217-FZ “On Conducting Horticulture and Market-Gardening by Citizens for Own Requirements and on Amending Certain Legislative Acts of the Russian Federation” dated July 29, 2017 [11]. This law was put in force on January 1, 2019 replacing Federal Law No. 66 [12]. The new law gives a precise definition of allotment cottage. According to 217-FZ, an allotment cottage is a building for seasonal use designed to satisfy the household and other needs of citizens associated with their temporary stay in such building. Hence, the law defines an allotment cottage exclusively as a place of temporary seasonal stay of citizens. At the same time, Article 23 of the new Federal Law provides for the right to construct residential houses on allotment garden plots, where registration of residence is possible in the event that urban planning regulations provide for the possibility of construction in the territorial zone, in which the allotment garden plot is located. The law also provides for the possibility of recognizing an allotment cottage as a residential house. These provisions of 217-FZ should eliminate legal uncertainty and deficiencies in the conceptual apparatus of the preceding Federal Law.

From January 1, 2019 the legislator clearly distinguishes between the notions of allotment cottage and residential house, while the owner of the allotment garden plot reserves the right to build any of them. The adoption of Federal Law No. 267-FZ dated August 2, 2019 known as the new law on “dacha amnesty” is also in line with these changes [13]. The law allows for state cadastral registration of a residential house or allotment cottage created on a land plot intended for gardening by citizens on the basis of only a technical plan and a land title document. Thus, the law confirms the possibility of building both an allotment cottage and a residential house on a land plot intended for gardening. The term residential building is not used in 217-FZ and 267-FZ.

To sum up, it is necessary to note the liberalization of the legal regime of buildings constructed on allotment garden plots during the last quarter of the XX century and the beginning of the XXI century. From the allotment cottage in Soviet legal regulatory acts, to which strict design requirements were posed and which had to be built according to a standard project, the legislation is moving to the concept of residential building in the late 1990s. The design features and parameters of such residential buildings were not established, but the legislator deprived citizens of the right to register their residence there. Finally, in 2019 the concept of residential building was abolished and citizens received the right to build both a full-fledged residential house and an allotment cottage on a land plot intended for gardening. At the same time, the definitions of residential house and allotment cottage remain very vague in modern legislation.

In terms of cadastral registration of real estate objects located on allotment garden plots, the abovementioned legislative changes directly influence the classification of buildings on garden plots.

In the light of adoption of Federal Law No. 267-FZ of August 2, 2019 “On Amending Certain Legislative Acts of the Russian Federation” (the so-called law on “dacha amnesty” extension) an acute problem is the need to legislatively determine the criteria for distinguishing an allotment cottage from a residential house in the sphere of cadastral registration of real estate, i.e. the problem of classifying buildings on allotment garden plots. Until 2021 this Federal Law permits performing state cadastral registration of both an allotment cottage and a residential house created on a land plot intended for gardening on the basis of only a technical plan and a land title document. Information about the building should be indicated on the basis of project documentation (if available) or the declaration of immovable property, which is signed by the right holder. Consequently, both the cadastral engineer preparing the technical plan and the owner of the building have the task of defining the real estate object as an allotment cottage or residential house. According to Article 3 of 217-FZ [11], an allotment cottage is a building for seasonal use. However, it is often difficult to determine the possibility of seasonal or year-round dwelling. To a certain extent cadastral engineers might be helped in this case by Resolution No. 47 of the Government of the Russian Federation of January 28, 2006 “On Approval
of the Regulation on the Recognition of a Premise as Residential, Residential Premises as Unfit for Human Habitation, Apartment House as Unsafe and Subject to Demolition or Renovation, Allotment Cottage as Residential House, or Residential House as Allotment Cottage”. Part II of this regulation deals with the requirements that must be met by residential premises [6]. These requirements demand a comprehensive expert examination to assess whether the premises are residential. In particular, according to this provision, it is necessary to assess the framings of the building, the air exchange rate in all ventilated living quarters, thermal insulation, noise load, and insolation. Of course, such an assessment requires additional costs as well as time. Within the framework of cadastral registration it is extremely expensive, since it will require the involvement of not only material resources, but also additional specialists. Thus, it is difficult to apply the articles of “Regulations on the Recognition of Premises as Residential...” in the course of cadastral registration. This legal collision is a typical example of the fact that the process of cadastral registration itself requires its own legislative framework, since the existing legislation in the field of urban planning and construction is not always applicable in cadastral activities. In order to solve the problem of registering dacha-type buildings it is necessary to develop uniformly approved criteria for distinguishing seasonal buildings from a residential house precisely in the field of cadastral registration.

It should be noted that the abovementioned need for a legislative elaboration of criteria for distinguishing an allotment cottage from a residential house is also associated with certain practical difficulties. Country houses that are already registered in the cadastral register have such additional characteristics as purpose and name specified in accordance with the previously existing legislative framework and arbitrarily to a certain extent, hence it becomes necessary to update them. At the same time, the issue of changing the name of a building already present in the register is not regulated by Federal Law No. 218-FZ “On State Registration of Real Estate” dated July 13, 2015 due to the lack of rules for assigning names to real estate objects [14]. The procedure for changing the purpose of a building is also not established by law. Only basic information about a real estate object can be changed at the request of the owner of the building, and this does not include the purpose, as well as the name of the building.

It should also be noted that changes in regulatory legal acts related to the classification of allotment cottages have another significant aspect, which is technical. For instance, in the field of practical application the abovementioned transition from the model that existed in 66-FZ to the legal realities of 217-FZ might be complicated by the confusion that has arisen in the register in a number of regions in terms of accounting for allotment cottages. In the xml-scheme of the technical building plan (version 03) used for cadastral registration of a building, structure, or object under construction it was technically possible to specify only a residential house, apartment house, or non-residential building in the “purpose of building” field. Consequently, the registering authority and cadastral engineers had to input “residential house” or “non-residential building” as the purpose of the building on the allotment garden plot, even though 66-FZ defined buildings on allotment garden plots as residential buildings. This inaccuracy could be compensated for by filling in the “building name” field, in which the user, according to the xml-scheme, could indicate the most suitable name [12]. At the same time, filling in the “name of building” field is not regulated by law. In the absence of a uniform form for filling out this field, as well as due to the legal difficulties specified in this study, a significant part of allotment cottages already included in the state cadastral register have various names in the EGRN, for example, “residential house”, “allotment cottage”, “residential building”, “house”, etc. Cadastral registration of allotment cottages was performed on the basis of declaration completed by the owner of the building. In light of clear distinguishing of allotment cottage and residential house in 217-FZ the question of such inaccuracies in the EGRN will become more acute, because a structure listed in the register as a residential house might not have the characteristics of a residential house according to construction and other standards.

Currently an xml scheme of technical building plan (version 06) is used for cadastral registration of buildings. However, it should be noted that this xml-scheme has no such purpose of the building as “allotment cottage” in the “purpose of building” field in the proposed list, while the purpose of
"residential building", which is not actually used in 217-FZ, is present in version 06 of the scheme. Thus, the xml-scheme itself might cause certain difficulties in the technical part of the procedure for cadastral registration of property. During the period of validity of 66-FZ these difficulties were associated with the absence of the “residential building” option for the purpose of building in the xml scheme. At present the “purpose of building” section has no option of “allotment cottage”, and therefore, it is required to provide a corresponding clarification in the section devoted to the name of building.

3. Conclusions
To sum up, in the case of classification of allotment cottages, and more generally, various real estate objects as such, for the purpose of cadastral registration two important aspects must be taken into account. On the one hand, it is necessary to improve the regulatory framework within the framework of Federal legislation and develop the conceptual apparatus and criteria for classifying real estate objects.

In relation to the buildings on allotment garden plots the main problem at the moment is the need to clarify the notion of immovables (real estate) and improve the criteria for distinguishing allotment cottages from residential houses, specifically for the purposes of cadastral registration. A legislative elaboration of the process of recognizing an allotment cottage as a residential house is also required. In our opinion, the process of evolution of the legal concept of “allotment cottage”, as well as the influence of this process on the sphere of cadastral registration, clearly demonstrates the need for a detailed elaboration of legal definitions specifically for cadastral activities. Construction and other legislative norms are not always applicable in the course of cadastral registration, and the lack of legal certainty regarding the conceptual apparatus creates confusion in the real estate register, as well as the emergence of register errors.

The second aspect of improving the classification of capital construction objects located on allotment garden plots is technical. It is necessary to update xml schemes in a timely manner and bring them in line with changes in legislation.

Practice shows that xml schemes do not always fully reflect the requirements of current regulatory legal acts. This, in turn, leads to the input of inaccurate information in the EGRN about real estate objects, because the input of certain information into the register is performed by preparing xml files.

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