Legal Regime of Realtors’ Activity as a Segment of Engineering Economy

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Abstract. The relevance of the issues under consideration is due to the lack of certainty in the legal regime for realtor activity in Russia. The aim of the study is to identify current problems of legal regulation of realtors’ activities in the context of the use of digital technologies in the engineering economy and develop recommendations for their solution. Methods of research are analysis and synthesis, elements of comparative law. The article examines the trends in the development of the real estate market under the influence of digital technologies, organizational and legal problems of realtors in their activities, their legal status. This article may be useful for specialists in the field of law, economics, as well as for those who carry out law-making activities.

Keywords: Digital technologies · Legal regime · Organizational and legal means · Realtor activity · Real estate market

1 Introduction

The acceleration of the changes taking place in society has increased significantly due to the use of numerous and diverse information technologies in all spheres of life of Russians. This fate has not passed the real estate market. The COVID-19 pandemic has accelerated the mass transition of countries from globalization to protectionism, which determines their use of various means of ensuring economic security, including financial security [7], and protection of their national markets.

Digital technologies, the pandemic, the economic crisis and other circumstances in a variety of interactions can cause or at least accelerate changes in the range of real estate objects, the volume of its turnover, significantly changing (most often reducing) the liquidity of conventional objects (large apartments in the secondary and even more primary housing market, office space, and others), and causing the emergence and greater liquidity of new ones. Thus, in the last decade, trends of reasonable savings and co-consumption of real estate have intensified, which have led, for example, to properties with a function, such as coworking (collective offices) and coliving (cohabitation houses), which was indicated before the pandemic and not in connection with the economic crisis [6]. The above-mentioned patterns and events have a noticeable impact on the services sector in the real estate market, and the most significant one - on realtor activity. Thus, in the conditions of increasing competition in the real estate market, realtor organizations that consistently adopt new technologies that improve cooperation and strategic management of real estate objects get significant advantages. For
example, these ones that use geoinformation services through the Geomanagement app [1], which supports the implementation of the business strategy of a real estate brokerage agency based on the mobility and joint work of its employees. At the same time, the legal regime of real estate activity does not have sufficient certainty and special legal regulation, which determines the relevance of the issues chosen by the author as the subject of the study.

2 Methodology

The results were obtained by using such methods as analysis, synthesis, comparison, generalization. The methodology of the study included the study of scientific literature on the selected topic, analysis of regulations governing the activities of realtors, taking into account the results of legal practice; conclusions were formulated and the publication was prepared. The study of changes in the provision of services in the real estate market has revealed a direct dependence of the very existence of the realtor services segment on the pace and completeness of their implementation of IT capabilities in the conditions of the digital revolution [8] and increasing competition on this market.

3 Results

The achievements of the Russian state in the legal regulation of certain segments of the real estate market are not only obvious, but also recognized by the international community. Thus, from May 2018 to May 2019, the Russian Federation moved from 35th to 28th place in the global ranking of countries in terms of favorable business conditions (and especially the legal environment). And it ranks the 12th in terms of ‘property registration’, which combines such criteria as: registering property procedures, time and cost to transfer a property and the quality of the land administration system [11]. At the same time, it should be recognized that on the microeconomics scale, legal requirements are an important set of factors that determine the profitability and even the overall efficiency of the engineering economy entities, adjusted for risk [4]. Certain segments of the engineering economy have a developed and relatively complete, and in some cases even redundant legal base in the real estate market, such as development activities, appraisal activities, and the legal status of entities engaged in such types of business. Against this background, the assessment of the level and completeness of the regulatory consolidation of the of realtor activity legal regime, including, first of all, the extreme uncertainty of the legal status of realtors themselves in the Russian Federation, appears to be negative. Currently, the activity of realtors is a necessary segment of services in the real estate market, largely serving it, speeding up the turnover of real estate, ensuring the best combination of interests of its participants, representing the interests of customers, significantly reducing the legal, organizational, economic and other risks of participants [10].

At the same time, it is difficult to explain the contradiction between the social and economic significance of a certain type of business for the national economy and the country as a whole and the degree of legal order of this type of business. What is the
justification for the lack of attention of the Russian legislator to the problems of this type of business activity? Do law-making bodies consider them not significant enough for the purposes of legal regulation? In fact, the problem under consideration is more complex, which was revealed during the discussion of the draft of the relevant Federal Law [3] (hereinafter – the Draft Law) in 2016, which proposed the introduction of such legal means of regulating realtor activity as its licensing and establishing a regime of mandatory membership of realtors in a self-regulatory organization. The discussion of the Draft Law [2] showed that the legislator faced a difficult choice, which should be preferred over the two socially significant values. On the one hand, the establishment of the legal regime of economic activity proposed by the Draft Law would entail the following negative consequences for the national economy (with a non-obvious positive effect):

- significant limitation of the already excessively regulated entrepreneurial activity, which has now made it necessary for the Russian government to apply such a radical and undisputed measure of ‘liberating’ the entrepreneur as a regulatory guillotine,
- significant increase in the costs of real estate entities, and ultimately - additional costs to customers,
- increasing complexity and difficulty for new business participants to enter this market, which would contribute to the growth of stagnation in this segment of the economy,
- expansion of the already critically widespread practice of so-called ‘shadow realtorship’ - i.e. the implementation of realtor activities not only without membership in a self-regulatory organization, but even without registration as an entrepreneur (as a realtor agency for commercial organization or as a realtor for an individual entrepreneur).

On the other hand, the establishment of requirements for realtor activity (that will become certain barriers for realtors) in the form of certification and mandatory membership in a self-regulatory organization is possible only if the following conditions are fulfilled:

- there is an objective need to change the current model of entrepreneurial activity regulation,
- there is a reason for the industry to adopt such a model of self-regulation,
- the main thing is that realtor activity has a high potential risk of damaging the rights, legitimate interests, life or health of contractors and third parties.

According to the participants of the legislative process, the activities of realtors do not meet these requirements. However, it is difficult to agree with this conclusion. Since the Russian state has refused the previously used licensing of real estate activities, it is possible to consider such experience as a failure, however, it has not received the necessary comprehensive analysis in the studies of historians of modern domestic law. However, after the achievement of a steady turnover of real estate and its accompanying services, and due to the presence of a large number of unskilled and/or unscrupulous participants among the subjects of realtor activity, the need to legislate the legal regime of their activities increases. Currently, the Russian Federation is not
the only country that does not use either separately or jointly any of the two main methods of public legal influence on realtor activity:

– its licensing,
– obligatory participation of realtor organizations and (or) realtors-individual entrepreneurs in self-regulatory organizations.

Thus, at present, state licensing of realtor activities is absent in Austria and Spain, therefore, on their territory, as in Russia, any commercial organization can carry out realtor activities if this type of its entrepreneurial activity is indicated in its Charter and, accordingly, in the country’s commercial register. A completely different legal regime for realtors has been established in a number of other countries that actively use institutional and legal means of state influence on participants of such activities. In the Federal Republic of Germany, for example, the participants of realtor activities are usually lawyers who have completed additional training in the relevant courses, successfully passed the exam and received a state license. Various organizational and legal means of preliminary, current and subsequent state, public and collective (corporate) control over the activities of real estate professionals and brokers are used in the United States of America. It is interesting which is for independent research.

4 Discussion

Due to the high cost of real estate objects and their special significance for the economic situation and social conditions of life and activity of the majority of participants in civil turnover, it seems reasonable to conclude that realtor activity has a high potential risk of damaging the rights and legally protected interests of contractors of realtors and third parties. It is necessary to point out the contradictory use of terms to refer to participants in entrepreneurial activity in the real estate market in domestic literature (and not only popular, but also scientific) in the field of jurisprudence, economics, and management. This can apparently be explained not only and not so much by the peculiarities of national speech, but by the use of terms by the legislative and other law-making bodies of a particular country, the historically established set of doctrinal terms adopted in national jurisprudence. Services in the real estate market, including realtor services, are being studied both in Russia and in other countries. The legal aspects of realtor activities are chosen by Russian scientists most often as a subject of independent research. In the latest works of foreign authors, real estate turnover issues, including realtor services, are usually considered comprehensively, without special attention to legal aspect. This is especially true when highlighting the possibilities of using the latest digital technologies in real estate turnover. Examples of such analysis can be the identification of: the potential of virtual and augmented reality technologies in making decisions about the purchase of real estate with high involvement [9]; opportunities for supporting cooperation and strategic management of a real estate broker based on the location of the service [1]; the key role of estate agency industry in the growth of the real estate market (in historical aspect) [5], and others. This methodological approach seems to be productive.
5 Conclusion

When determining the legal regime of realtor activity, it is advisable for the legislator to take into account the practice of using organizational and legal methods which is widespread in economically developed countries and has a positive reputation:

– admission of new participants to the realtor services market,
– ensuring the necessary qualifications and integrity of existing market participants.

The practice of using public legal means of preliminary, current and subsequent control is characterized by features that are individual for each national legal system (in the USA, Europe, UAE and other countries). The modern practice of law-making activities of the Russian state allows us to conclude that it currently has no purpose to regulate realtor activity by special rules of public law.

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