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# Georgian Real Estate Regulatory Aspects



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## Scope

Aim of this presentation is to give a *general overview* of the real estate regulation in Georgia covering issued related to:

- ❖ Status of real estate, various right to real estate, forms of real estate acquisition, real estate registration, status and functions of the National Agency of Public Registry (Agency/Public Registry) as well as recent reforms undertaken in the field of immovable property registration.
- ❖ *Regulations related to taxation and real estate construction are out of the scope of this paper.*

## 1. Legal sources

Principal legislative acts regulating real estate market in Georgia are the following:

- ❖ The Civil Code of Georgia dated 26.06.1997;
- ❖ The Law on Ownership of Agricultural Land dated 22.03.1996;
- ❖ The Law on Privatization of State Owned Agricultural Land dated 08.07.2005;
- ❖ The Law on Acknowledgment of Ownership Right over the Land Plots Possessed by Individuals and Private Entities dated 11.07.2007;
- ❖ The Law on Public Registry dated 19.12.2008;
- ❖ Some other laws and secondary legislation.

## 2. Real estate (notion, definition)

- ❖ Under the Civil Code, a thing may be movable or immovable. Immovable things include a **tract of land** with its **subsoil minerals**, the **plants** growing on the land, and **buildings** and other **structures** firmly attached to the land. All other assets are deemed to be movable.
- ❖ Buildings and structures attached to the land and not intended for temporary use are regarded as essential parts of land and can not be subject to a separate (ownership) right.
- ❖ E.g. even when acquiring apartment in apartment block (in addition to such apartment), the buyer legally acquires respective share of the land parcel on which the apartment block is located;

## 3. Rights to Real estate

Various rights/interests to real estate may be classified into two main groups: (i) **ownership as an all embracing right** and (ii) other **limited rights** (to use).

- i. Ownership is an absolute right to possess, use and dispose property and to exclude others from interference on the thing;
- ii. Limited rights grant only limited legal powers to the holder *mainly* to possess and use property. These include:

**Usufruct** entitles to use the object and its fruits. The proprietor is obliged to reimburse for maintenance expenses.

**Hereditary building right** right covers the right to build, keep and own a building on the property owned by a separate proprietor. It is usually based on a contract providing for payment and is for a long term.

**Servitude** is made in favor of another (mostly neighboring) real estate and can contain a certain permit to do something on the encumbered real estate (e. g. to park or drive there).

**Lease** is made to use immovable property for some economic purpose and **Mortgage** is a form of security interest for securing (monetary) claims.

Lease may not be registered in the Public Registry while other rights are not valid without registration. These rights are also safe against the transfer of property.

## 4. Types of Land

- ❖ In terms of designation/purpose, land plots may be classified as agricultural and non-agricultural lands.
- ❖ Land is legally considered to be agricultural if it is so registered in the Public Registry and is applied for farming, plant-growing animal husbandry etc.
- ❖ Georgian legislation allows changing of land designation i.e. conversion of agricultural land into non-agricultural one (but not *vice-versa*). This is realized on the basis of applicable procedures, decision of the competent state body and involves payment of certain monetary compensation. Fees vary according to geographical location of the land plot in question.

## 5. Restrictions for Foreign Nationals to Own Real Estate

- ❖ There are certain legal restrictions preventing foreign nationals and legal entities from acquiring real estate in Georgia. Namely, foreigners are not allowed to purchase agricultural land regardless such land is owned by the state or private person/entity.
- ❖ In order to avoid restrictions in respect of direct ownership of agricultural land by foreign nationals, acquisitions through a Georgian-based company (LLC or similar) may be used.
- ❖ However, foreign nationals and entities may otherwise possess (e.g. lease) agricultural land and, importantly, acquire [non-agricultural land](#).

## 6. Forms of Acquisition of Real Estate

- ❖ In There are two main forms of real estate ownership: state and private. Acquisition of state owned immovable property is done via privatization. Acquisitions between private persons may [loosely] be referred to as private acquisitions.

### 6.1 Privatization

- ❖ The state-owned non-agricultural land and immovable property attached to it may be transferred into private ownership only by way of **auction** or **direct sale**.

- ❖ In case of privatization of immovable property via auction the state is represented and auction is organized by the competent authorities (*e.g. the Ministry of Economic Development and its territorial bodies*). As for direct sale – it falls under the competence of the President of Georgia.
- ❖ In 2005 the Parliament of Georgia passed the Law on Privatization of State-Owned Agricultural Land that has much accelerated the process of privatization of agricultural land. There are three forms of privatization envisaged by the said law:
  - i. special auction;
  - ii. public auction;
  - iii. direct sale

- ❖ Direct sale (by the President) is conducted for privatizing the state owned land plots leased to individuals while special and public auctions are used for privatization of those state-owned land plots that are not leased out by the state.
- ❖ Only residents of specific geographic area, where land plots are situated, may participate in the special auction. The public auction is held if immovable property has not been sold at the special auction and is open to all Georgian nationals and legal persons.
- ❖ Price for privatized property may be paid in installments (within nine years). In addition, if buyer pays 50% of the total price at the moment of privatization (within one month) the rest will be deemed as already paid.

## 6.2 Private Acquisition and Registration

- ❖ In a private acquisition the following steps must be undertaken by the relevant parties (i.e. seller, buyer or their representatives): signing of immovable property sale and purchase agreement and registration of the agreement with the Public Registry.
- ❖ Sale and purchase agreement should either be certified by notary or signed at the offices of the Public Registry in presence of the Agency's officer. Fees for notary services are calculated from the value of the transaction i.e. property price and therefore, may be considerable. Therefore, signing of the agreements at the Public Registry that enables parties to avoid notary fees, has evolved into quite established practices.

- ❖ Other formalities may include submission of: application; copy of applicant's ID; relevant corporate documentation (if a legal entity is involved in registration process); POA, if registration is initiated by the representative (e.g. lawyer) of the seller or buyer; reference on payment of state registration fee.
- ❖ Registration is accomplished within four business days for a fee of 50 lari. In case of expedited service, registration may be accomplished within a day, at the cost of 200 lari.

## 7. Status of the National Agency of the Public Registry

- ❖ Ownership right to real estate (and other limited rights) are legally created only upon the registration of such rights with the Agency. The registration data is considered to be true and comprehensive as from the moment of its inscription until the moment they are contested and invalidated in accordance with the procedures established by law.
- ❖ Agency, established in 2004 under the auspices of the Ministry of Justice, is a unified registry maintaining comprehensive information on all registered immovable property country wide, including land parcels, buildings and structures, linear objects as well as various obligations and restrictions related to immovables (e.g. mortgages, liens, tax mortgages/pledges).
- ❖ More than sixty territorial registration offices operate throughout the country under the Agency, which conduct registrations and perform other relevant activities.

## 8. Reforming the Agency

- ❖ For years real estate registration process was very complicated and time-consuming both for physical and legal persons: parties had to deal with several other entities (technical bureaus of inventory, housing departments, notaries, etc) involved in registration process.
- ❖ Gradual development of immovable property market necessitated establishment of a new registration system for ensuring recognition and protection of immovable property rights by the state.
- ❖ Implemented reform involved three main directions: *technological, legislative and institutional/administrative.*



- ❧ The Agency's website ([www.napr.gov.ge](http://www.napr.gov.ge)) was created to provide useful guidance on its activities, procedures for registration of property, relevant laws and sub-laws etc.
- ❧ It is also noteworthy that all interested persons may review and obtain information online regarding status of certain immovable property as well as the applicable registration process, including renewal of extracts on immovable property, references on lien and tax pledge/mortgage.
- ❧ The unified computer network allows a customer to receive distance service regarding the immovable property that is located in various parts of the country.

## 8.2 Legal

- ❖ An electronic extract on immovable property (the main title document) and its print-out have legal force and may be used by any administrative authority, legal entity or individual.
- ❖ Differentiated fixed fees were set for registration and information service.
- ❖ Registration timelines were reduced: four days were determined as the maximum term for registration of a sales agreement as well as for other services (preparing cadastral maps, extracts etc.).
- ❖ Expedited registration service was introduced, which enables customers to register their property within one day, after payment of the established fee and compliance with related requirements.

## 8.3 Institutional/administrative

- ❖ Part of administrative reform involved training of existing or recruitment of new personnel and improvement of quality of services rendered by the Agency's employees (free legal consultation via telephone, web-cam etc).
- ❖ Reconstruction of registration offices was carried out for delivering transparent and efficient service to citizens.
- ❖ Professionals who work in the field of real estate/with property registration can now become "authorized users," and receive permission to access the Agency's unified database via the internet, obtain specific information and perform certain actions online. In addition, the authorized users are allowed to deal with registration offices on behalf of their customers, submit documents for registration and obtain the needed documentation.

- ❖ Currently, the Agency has more than 300 authorized users comprising of law firms, real estate agents, banks, other institutions and individuals. Daily about 1400 applications for registration are filed with the registration offices of the Agency, 40% out of them are the applications submitted by the companies – authorized users, i.e. large number of citizens choose service of the private companies, which significantly reduce queues in registration offices.
- ❖ According to the World Bank and International Financial Corporation (IFC) survey “Doing Business 2009”, Georgia has taken the 2nd place within the immovable property registration field. Ranking is determined on the basis of/in view of the several factors, such as e.g. number of procedures involved, time required for registration and applicable price.

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