

PROCEDURE OF PRIVATE PROPERTY RIGHTS TO LAND

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The article is devoted to the legal procedure issues of occurrence of the right of private land ownership. Particular attention is paid to the analysis of the current procedure of state registration of land ownership by the citizens of Ukraine.

Land, the procedure of state registration of land ownership, origin of the right of private ownership of land.

Enforcing land reform in Ukraine calls for theoretical understanding of the procedures of property rights to land. In the current circumstances, the problem of procedures in land law is acquiring theoretical importance and practical significance, as at the beginning of 2013 the procedure of registration of land rights underwent certain changes. This is especially true of the Law of Ukraine «On State Registration of Rights to Real Estate and Encumbrances» and the Law of Ukraine «On State Land Cadastre». A novelty in Ukraine's legislation is that during the formation and the registration of land rights two registers are to be recorder namely the formation of land is to be recorded in the State Land Cadastre and the registration of land rights is to be carried out – in the State Register of Rights to Immovable Property and Their Encumbrances.

Legally regulated procedures in the field of property rights to land must secure the implementation of the basic principles of land law.

The aim of paper is to study the legal issues of the procedure of property rights to land and the changes of the procedure of state registration of rights to land after 1 January 2013.

The Constitution of Ukraine declares that «The right to land ownership is guaranteed. This right is acquired and implemented by citizens, legal entities and the State only in accordance with the law».

The Land Code of Ukraine outlines the general rule of the right to private land ownership according to which citizens and legal entities

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acquire the title to land from the lands of state and communal property by the decision of the executive authorities or local authorities within their powers or in the result of the auction. Acquisition of land ownership by citizens is implemented by means of land transfer into ownership.

It is appropriate to note that the registration of title to land, which is in the form of transfer of land ownership is a complex legal fact and provides for the implementation of complete, consistent proceedings, defined by the legislation [1, p. 380]. These actions in updating the registration of land rights can be combined in the following interrelated steps: a) the application for the grant of land ownership, b) the examination of the application by the relevant executive authority or local self-government and granting permit to develop the land development project on a land allotment c) the development of the project for land allotment d) approval of the project on land allotment in accordance with Article 186 – 1 of the Land Code e) the resolution to approve the land project for land allotment and transferring it into ownership property of f) the transfer of land border on ground location g) state registration of land ownership.

An application for land ownership is realized by citizens who are interested in the implementation of the legal right regarding the possession, use and disposal of land. The petitions is implemented through the submission of an application.

In accordance with Art. 118 Land Code of Ukraine petition is submitted by a citizen of Ukraine, who is interested in the privatization of land that is in his use.

The petitions are submitted by citizens interested in receiving free of charge land ownership from the lands of state and communal property for farming, individual farming, gardening, construction and maintenance of residential homes, commercial buildings and structures (infield), individual country construction, construction of private garages within the rules of free privatization, citizens, state employees and the employees of communal agricultural enterprises, institutions and organizations, as well as pensioners are interested in receiving free land ownership, which is in constant use of these enterprises, institutions and organizations.

Applications and petitions are only submitted in a written form and sent to the relevant executive authority or local self-government, which transfer land allotments into ownership from state or municipal ownership the property in accordance with the authorities of Article 122 of the Land Code of Ukraine. If the land allotment is outside the settlements and not included in the defined area, applications and petitions are to be submitted

to the Council of Ministers of the Autonomous Republic of Crimea.

In the petitions of citizens for free land ownership from the lands of state and communal property estimated size and its purpose are indicated. The copies of the cadastral map (plan) or other graphic materials, which indicate the desired location of the land, the land user reconciliation (in case of withdrawal of land that is in use by other persons) and proof of work experience in agriculture or a degree in agriculture (in the case of land provision for farming).

Examination of the materials and the resolution depend on the conditions and the objectives of land transfer into ownership.

If a land allotment is privatized which is in use by a citizen, the resolution is made by the executive authorities and local self-government on the basis of technical materials and documents which prove the amount of land (the state act on the right to permanent land use, land-cadastral documentation). The term within which a resolution is made is one month since the date of the submission of the application.

A little more complicated procedure is provided for land that is not in use of other citizens from state or communal land ownership. The submitted application is examined by the relevant executive authority or local self-government, which transfer state or municipal property in the ownership in accordance with the authorities defined by Article 122 of the LC of Ukraine.

If the land is public property outside the settlements and not included in the defined area, the petition is to be submitted to the Council of Ministers of the Autonomous Republic of Crimea. In case of positive resolution to the land transfer into the application, grants a permit for the development of a land project which for land allotment. The land is developed order on the request by the entities of economic activity, who execute work on land project according to the law within the term stipulated by the agreement of the parties.

An important procedural action is the coordination of the land project for land allotment. Developed project of land allotment of all categories and types of ownership is subjected to mandatory consultation with the territorial authority of the central body of executive power that implement of the realisation in the field of land relations.

The project of land allocation within the locality or land allotment outside the residential area, where a construction object is located or such on object is planned to be located, is also applied for approval to the authority of municipal planning and architecture.

In addition, depending on the purpose of land Land Project for land allotment is to be conformed the environmental authority, a body of cultural heritage a forestry body, water conservancy authority.

In case the land project for land allotment is subjected to compulsory state examination of land documents, the coordinated project is supplied by the customer or the developer to a central body of executive power that provides the implementation of the state policy in the field of land relations, or its territorial body for such examination.

After the approval it is submitted to the examination by the relevant executive authority or local self-government, which allocates land allotments from state or municipal property into the ownership in accordance with the authorities defined by Article 122 of the Land Code.

Within two weeks term the date of the receipt of the confirmed land project for land allotment (in case of necessity for mandatory state examination of land documents under the law - after the positive conclusion of such an examination) the relevant executive authority or local authority, that transfers land plots of state and municipal property into ownership in accordance with the authorities provided in Article 122 LC, makes a resolution to approve the land project for land allotment and to transfer it into the ownership.

Some features characterize the procedure of the examination of materials in the case of privatization of land plots by citizens who are employees of state and communal agricultural enterprises, institutions and organizations, as well as retirees from lands that are in constant use of these enterprises, institutions and organizations. First, the land which are relevant to privatization, are in constant use of appropriate agricultural entities, and secondly, people submit an application (not a statement) to local authorities or executive authorities, where they specify: the information about the intended purpose of land, of which it is desirable to allocate land, the purpose of land use, size, location and outlined.

The relevant local self government body or the executive authority shall takes into consideration the application and grants a permit to enterprises, institutions and organizations to develop a project of land privatization. Thus, the project of privatization of agricultural land is developed by legal agricultural entity itself, by the efforts of own experts, at its own specialists, at its own expense, using its own funds. Its contents is information about the land according to their purpose and location, evaluating the area and the cost of a conventional cadastral acres, stating the number of employees and pensioners among them, who have the right

privatization.

The developed projects of land privatization are approved by local authorities or executive authorities. After their approval, a transfer of land ownership to citizens is provided.

The transfer of land boundaries in nature (in the area) is the next stage in the acquisition of land ownership. At this stage, the allotment of land in nature (in the field takes place). Its practical significance lies in identifying and securing the borders and configuration of land. Plots the implementation of such activities is a necessary condition for the occurrence of the rights of land owners and land users.

The transfer of land boundaries in nature (in the area) is done for a fee. The reason for this is the agreement concluded between a customer and a business entities executing work on land in accordance with the law.

The last stage in the acquisition of ownership of the land is state registration of ownership of the land.

According to P.F. Kulinich, state registration of rights to land is an official recognition and confirmation by the state of the facts of origin, transit or termination of the rights of ownership, of use, in particular, of the right to land lease, and their restrictions, land easements, etc., which are accompanied by the introduction of data on registered rights to the State Register of real rights to immovable property and their encumbrances [3, p. 311]. So, agreeing with his point of view, it is appropriate to consider the procedure of state registration of land rights in more detail.

The state registration of rights is compulsory as under Article 331 and 334 of the Civil Code of Ukraine (here and after – CC) and Art. 3 of the Law of Ukraine «On State Registration of Rights to Immovable Property and their Encumbrances» the rights to immovable property and their encumbrances, which are subject to state registration in accordance with the law, arise from the time of such registration.

But there is a definite exception to the right of use (lease, rent) a building or of other permanent structures, their individual parts. In accordance with Art. 794 of CC such right is subject to state registration, if the rental agreement or the agreement lease under which it occurs is concluded for a period which is not shorter than three years.

Art. 125 of LC of Ukraine secures the case of property rights to land, according to which the ownership of a land plot arises from the moment of state registration of the right.

The point of view of P.F Kulinich that the question of how state registration of a land plot and state registration of rights to land are related ,

has not only theoretical but also practical value [4, p.137] should be supported. Part 9 of Art. LS 79-1 emphasizes that a land plot can be the subject of civil rights exclusively since the moment of its formation (except for the case of sub-lease, easement of parts of land plots) and state registration of rights to it.

As N.V. Ilkiv put it rightly saying that, «state land registration» and «state registration of land rights» to a land plot [2, p. 81] are of different legal origins.

LS of Ukraine the order of acquisition of ownership of the land is divided into two stages: a) the formation of a land plot (those land plots, which are formed for the first time are in question) b) the state registration of a land plot.

The formation of a land plot – consist in establishing its technical, economic characteristics and legal status in the process of land development. A land plot is formed in the following ways: a) the withdrawal of land plots from the lands of state and communal property, and b) the division or consolidation of land previously formed a) determination of land boundaries of state or communal property of land management on projects of town planning and organization of public services of the territories of settlements.

A land plot is formed on the basis of developed land management documentation and is thought to be formed from the moment of assigning inventory numbers - individual numeric code (number) of a land plot that is not repeated on the whole territory of Ukraine and is given to a land plot at its registration and holds for the whole period land plot exists. State registration of a land plot is executed during its formation by opening a Land Record Book for such a land plot on the location by the relevant state cadastral register of territorial authority of the central executive body on issues of land resources in the cities of Kyiv and Sevastopol, and the cities of republican (the Autonomous Republic of Crimea) and regional importance, area under the procedure provided by the law.

Land Records is a document of the State Land Cadastre, which contains the following information about the land plot: a) inventory number; b) an area of the location (administrative unit) ; c) the composition of land; d) the purpose (land category, type of land use within certain categories of land; e) normative monetary evaluation; e) information on restrictions on the use of land; f) information about the boundaries of the land which is the subject to an easement, or to sublease of land; g) cadastral plan of the land plots; h) the date of state registration of land

plot; i) information on documentation of Land Management, under which the state registration of the land, is executed as well as changes added to this information;

i) information about the owners (users) of a land plot in accordance with the data of registered real rights in the State Register of rights to real property;

j) data on soil evaluation. Land Records is started simultaneously with the state registration of the land.

An inventory number is assigned to a land plot details of which are included to the State Land Cadastre. Cadastre number of the land is its identifier in the State Land Registry. The numeric system of cadastral land is unified throughout the territory of Ukraine. The law provides for the cooperation of the body that runs the National Land Registry with a body of state registration of rights. Thus, simultaneously with state registration of a land plot it provides The Authority of State Registration with the information about the state registration of a land plot (the date of state registration, the body which carried out the following registration) inventory number, area, location of a land plot; cadastral plan of the registered land in the electronic (digital) form. In its turn, a body of state registration of rights at the same time with the state registration of real rights to land provides the authority that runs the National Land Registry, with the information about: a) the subject of the right to land ownership, b) the subject of property right to land plot. c) the state registration of ownership of the land use, right to land (servitude), the right of permanent use, the right to lease (sublease) of land, the right to use the land for agricultural purposes (perpetual lease); land development rights (superficies), d) the date of state registration, the registration number of a land plot in the State Register of Real Rights to Immovable Property with details about its inventory number and the authority of the state registration. In addition, the cooperation of the body that runs the National Land Registry and the authority of state registration of rights is settled by the Decree of the Cabinet of Ministers of Ukraine dated from the 22 February 2012 N1181.

Registering into the State Land Registry or providing a grounded refusal is carried out within a period which is not longer than fourteen working days since the receipt of the relevant documentation, if this law does not provide another term for the implementation of these actions.

The second stage of the acquisition of the ownership of the land is state registration of the rights to it, which is carried out after the state registration of land in the State Land Registry. That is, first a registration of land in the territorial bodies of the State Agency of Land Resources of

Ukraine is carried out and in local bodies of the State Registration Service of Ukraine, which is coordinated by the Ministry of Justice of Ukraine.

Information about rights to immovable property and their encumbrance must be registered in the State Register of Rights.

In accordance with Art. 18 of the Law of Ukraine «On State Registration of Real Rights to Immovable Property and their Encumbrances» a certificate of title to persons in the real property is issued to individuals and entities [6].

The law «On state registration of real estate rights and their encumbrances» recognizes all rights to land plots that were registered before 1 January 2013 even in the absence of their state registration providing that, the registration of the rights was carried in accordance with the law in effect at the time they occurred, or if at the time the right to occurred the legislation did not provide for compulsory registration of such rights.

Thus, the Law "On State Registration of Rights to Real Estate and their encumbrances" recognizes all rights to land plots that were registered before 1 January 2013. This in particular means that state acts of land ownership issued prior to January 1, 2013 remains in force after 1 January 2013 – as long as the relevant plot of land is an object of civil rights.

Despite the recognition of the title to such land, by the state their owners may have individual problems if such a land plot does not have a cadastral number. According to the final and transitional provisions of the Law of Ukraine «On the State Land Cadastre» land plots, the ownership of which occurred before 2004, are considered to be formed regardless of the inventory numbers assigned to them. [5] Therefore, such land plots can be used in accordance with their intended purpose. However, they are not at the disposal until a cadastral number is issued.

The absence of a cadastral number of the land plot manifest another significant drawback of its legal framework. It lies in the fact that information about this land plot is not registered in the State Land Register. This means that on the map documents of the State Land Registry (regular cadastral plan, etc.) there is no indication of the presence of land plot on the relevant locality.

References:

1. Земельний кодекс України : Науково-практичний коментар / за ред. В.І. Семчика. – К. : Ін Юре, 2004. – 676 с.
2. Ільків Н. Державна реєстрація у сфері земельних відносин / Н.

Ільків // Публічне право. – 2012. – № 3 (7). – С. 76–82.

3. Кулинич П.Ф. Державне управління у сфері використання та охорони земельних ресурсів / П.Ф. Кулинич, В.І. Семчик, М.В. Шульга // Земельне право України : підруч. Академічний курс. – К. : Вид. Дім «Ін Юре», 2008. – 589 с.

4. Кулинич П.Ф. Державна реєстрація прав на земельну нерухомість та земельний кадастр: поняття, співвідношення та правові засади / П.Ф. Кулинич // Юридичний журнал. – 2010. – № 5. – 548 с. – С. 136–142.

5. Про державний земельний кадастр : Закон України від 1 січня 2013 р. // Відомості Верховної Ради України. – 2012. – № 8. – Ст. 61.

6. Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень : Закон України від 1 січня 2013 р. // Відомості Верховної Ради України. – 2004. – № 51. – Ст. 553.