

## ESTABLISHMENT OF RIGHTS TO CONSOLIDATED REAL ESTATE COMPLEX

Lubov Borisovna Sitdikova\* Alla Andreevna Neznamova\*\*  
Maria Alexandrovna Volkova\*\* Svetlana Jurieвна Starodumova\*\*  
and Renata Romanovna Lenkovskaya\*\*

---

**Abstract:** The issue of legal regulation of relationships in the field of real estate has always been of interest in the modern legal science and has been approached differently, since real estate is an integral part of human life and human activities in any area. Modern demands of civil commerce involving immovable property and its participants' interest pre determine necessity to legis late real estate complex facilities. Real estate involvement in civil commerce and transfer of significant part of items of immovable property from state ownership to private ownership required that civil legislation be reformed and legal environment be created as necessary for exercise of rights to immovable property and transactions there with.

**Keywords:** Establishment of rights, state registration of rights, consolidated real estate complex, immovable property.

### INTRODUCTION

Within the scope of civil legislation reform, amendments introduced into the Civil Code of the Russian Federation by the Federal Law No. 142-FZ dated Jul-02, 2013 became effective as of October 01, 2013. It is of special interest that a new separate object of proprietary rights appeared: a consolidated real estate complex. Clause 5 article 1 of the Federal Law No.142-FZ dated Jul-02, 2013 contains the definition of a consolidated real estate complex.

Introduction of a new object of proprietary rights– a consolidated real estate complex– in the Civil Code of the Russian Federation is determined by the necessity of the most efficient circulation and state registration of complex infrastructural objects.

Pursuant to article 133.1 of the Civil Code of the Russian Federation, a consolidated real estate complex may represent an immovable item involved in circulation as a consolidated object.

Purpose of this scientific research is to analyze the effective legislation and to consider peculiarities of the consolidated real estate complex recognition as a consolidated object of civil commerce proprietary rights and establishment of rights there to.

---

\* Moscow City University (MGPU), 129226, Russian Federation, Moscow, 2<sup>nd</sup> Selskokhozay stvennyproezd, 4

\*\* Russian State Social University (RSSU), 129226, Russian Federation, Moscow, Wilhelm Pieckstreet, 4, build.1

Object of the research is social relations arising in the process of establishment of rights to a consolidated real estate complex.

Subject of the research is theory and practice of establishment of rights to a consolidated real estate complex in doctrinal, law-making, and law-enforcement aspects.

The authors of this article set a task to consider theoretical and practical aspects of establishment of rights to a consolidated real estate complex.

## **METHOD**

At the current stage of the legal science development, it is necessary to examine deeply the issues of statutory regulation of establishment of rights to a consolidated real estate complex. In particular, special attention should be paid to existence of gaps in the laws related to state registration of rights and cadastral registration of such immovable object.

Methodological basis of the research is a complex of scientific methods of knowledge obtaining, such as systemic, statistical, historical, legal, comparative-legal, logical, dialectic, and other research methods. The authors considered materials and key sources of various popular-scientific literatures related to the suggested topic; they analyzed laws, statutes, codes, rules, regulations and requirements of the Russian Federation.

The authors studied works of the leading scientists including N. N. Averchenko, E. V. Voskresenskaya, M. A. Dmitriev, Yu. F. Druzhinina, Zh. A. Kolesnikova, S. V. Narushkevich, A. A. Neznamova, A. V. Shukhareva, and others, and examined problematics of the hottest issues related to establishment of rights to a consolidated real estate complex.

## **RESULTS**

Special feature of a consolidated real estate complex is its structure, which represents an ordered collection of interrelated elements creating an integral whole exhibiting properties that do not exist in the elements forming such whole.

Structure of a consolidated real estate complex represents specific methods of physical, technological and legal connections of elements, *i.e.* an aggregate of several movable and immovable things for the purpose of creation of a new object of the civil commerce proprietary rights—a consolidated immovable thing (Neznamova, 2016). Legal structure of a consolidated real estate complex may be of special interest for the owners of compound complex infrastructural objects if such assets are intended to be registered and circulated as a consolidated object.

State registration of rights to a consolidated real estate complex makes absolutely impossible to sell objects (elements) included in the consolidated real estate complex separately at a later time, since pursuant to the article 133 of the Civil Code of the Russian Federation these elements lose separate things property at the moment of complex registration. In this case, only the whole complex is sellable.

It should be noted also that the mandatory requirement related to necessity to comply with the principle of an immovable thing indivisibility with concurrent absence of the principle of consolidated legal regime in relation to a land plot and a consolidated real estate complex may restrict the field of persons' interest in relation to a consolidated real estate complex. On Jan-01, 2017, the Federal Law No. 218-FZ "On State Registration of Real Estate" consolidating requirements to cadastral registration and state registration of immovable property and setting forth the rules of the Unified State Register of Real Estate maintenance becomes effective; however, it does not completely regulate legal relations arising as referred to a consolidated real estate complex. Registered right of ownership to a consolidated real estate complex will promotefull and comprehensive protection of the right of ownership to immovable property as such.

The research demonstrated clearly how important it is from the practical point of view to examine issues of establishment of rights to a consolidated real estate complex, since through consolidation and use of a combination of immovable and movable things for the single purpose civil commerce participants obtain a new economic unit, which represents a special indivisible good with certain economic value.

## **DISCUSSION**

### **General characteristic of the consolidated real estate complex**

A consolidated real estate complex means a combination of buildings, structures, and other things unified by their common purpose, inseparably associated with each other physically or technologically, including transportation, communications and utilities lines (railways, electric power lines, pipelines, etc.), or situated on the same land plot, if the Unified State Register of Rights to Immovable Property has registered the right of ownership of the combination of such objects in total as one immovable thing (the Civil Code of the Russian Federation (Part One) dated Nov-30, 1994 No. 51-FZ // SPS Consultant Plus // Official Gazette of the Russian Federation, Dec-05, 1994, No. 32, art. 3301.).

A consolidated real estate complex may not include proprietary rights and liabilities or exclusive rights. It is also determined that a consolidated real estate complex is an immovable thing participating in circulation as a single object. General provisions regulate legal status of the consolidated real estate complex.

Prior to such amendments introduction, due to lack of special legislation, status of such objects was often determined by court based on the analysis of technical and other characteristics of certain objects accounting for laws, statutes, codes, rules, regulations and requirements regulating the procedure of their operation. If no special regulation was found in the legal precedents, various opinions and approaches to identification of legal status of such objects were used, some of such objects were identified as real estate by the industry-specific legislation. In the situation of the absence of the due legislative regulation this sphere as far as many others could be the area of offences (Skuratov et. al., 2016).

Federal Law No. 142-FZ dated Jul-02, 2013 sets forth only general provisions related to legal status of a consolidated real estate complex, which may negatively affect the practice of such concept application for business entities in civil commerce.

Legislative provisions related to regulation of land matters and urban development matters, as well as issues of cadastral registration and state registration of rights to immovable property as a consolidated real estate complex are of special interest, since efficiency of application and practical demand for such norm are directly dependent thereon in practice (Lutovinova et. al., 2014).

Rules of indivisible things apply to consolidated real estate complexes; therefore, an indivisible thing may be collected only as a whole unless a possibility to divide a thing is determined by a law or a judicial act.

Law books most often consider three types of thing division: economic, legal, and in deed. Claiming that a consolidated real estate complex is an indivisible thing, we imply that it is impossible to divide it from the legal point of view, when a separate owner owns each part of it. Hence, legal division and division in deed in relation to a consolidated real estate complex are deemed synonymous notions and impossible due to explicit reference to its indivisibility in the law. At the same time, economic division of a consolidated real estate complex involving monetary and other compensation to a former owner with concurrent loss of any legal claims to a thing is not only possible but is an example of compliance with the provisions on indivisibility of a consolidated real estate complex. In this case, functional integrity of a complex is preserved, only the owner of a thing or ownership structure is changed.

The essence of indivisibility under the law is simple: “The law may recognize a thing as indivisible even if economically it may be divided...” (Shershenevich, 1995). The Civil Code determines the main principle of legal indivisibility of a thing: a thing is deemed a single complex object. Therefore, if we imply that a thing exists as a separate civil commerce object then such thing is deemed indivisible. Indivisibility of a consolidated real estate complex means primarily an impossibility to establish a separate right to its components as long as they represent a whole

thing: once they become a part of a consolidated real estate complex, the things lose their legal independence. From the legal point of view, the law likens a consolidated real estate complex to a simple thing with common fate.

Legal confirmation of indivisibility criteria undoubtedly does not affect the physical ability to divide things. Therefore, it is obvious that legal classification of things as divisible and indivisible is not related directly to their physical nature, which describes any thing what so ever as divisible. The law recognizes the things, the components of which retain attributes and functions of the original thing, as divisible. Rules of indivisible things are applicable to a real estate complex from the moment of consolidation of immovable and movable things combination, providing they represent a substratumable to circulate only as “one”thing, *i.e.* when things comprising a complex are legally unified by their common purpose and become a consolidated object, static and complete. When each of the comprised things loses its own purpose and ceases to exist as a separate object of civil rights losing its ability to circulate independently.

At the stage of a consolidated real estate complex creation, it is possible to change the substratum, which comprises it. Yet, after completion of the process of complex creation as a consolidated object, “withdrawal” or “introduction” of things there from or thereto with change of their numbers will have a legal meaning of disappearance of one consolidated real estate complex and appearance of a new one. The provision on consolidated real estate complex participation in commerce is formulated as mandatory and does not give the owners an alternative to make a decision on complex parts participation in commerce; it does not allow identifying complex parts as independent civil rights objects.

If other things of similar purpose replace any things comprising a complex, Art. 133 of the Civil Code of the Russian Federation may apply if it does not result in another thing appearing, and this allows owners of an indivisible thing to upgrade it without additional expenses and without changing legal nature of a complex. Therefore, a question arises: what significant properties of a certain consolidated real estate complex have to be preserved when parts of an indivisible thing are replaced by other parts? In our opinion, it is necessary to preserve properties attributable to all consolidated real estate complexes (generic characteristics), as well as attributes of their certain variations.

Prior to amendments introduction into the Civil Code of the Russian Federation by the Federal Law No. 142-FZ dated Jul-02, 2013, in practice a court actually qualified a transportation, communications and utilities line as an indivisible thing. Provisions of the Civil Code of the Russian Federation state that:

1. An indivisible thing is the thing, which may not be divided in deed without its destruction or damage, or amendment of its purpose, and which is involved in commerce as a consolidated object of proprietary rights;

2. An indivisible thing may have several components;
3. Replacement of an indivisible thing's components by other ones does not result in another thing appearing if the significant attributes of a thing remain unchanged.

These changes are aimed to some extent at accounting for peculiarities of the transportation, communications, and utilities lines, which now are recognized as consolidated real estate complexes and are regulated by the rules related to indivisible things.

Having analyzed article 133 of the Civil Code of the Russian Federation, we may conclude that clause 1 article 133 of the Civil Code of the Russian Federation misses a provision, pursuant to which a consolidated real estate complex and a land plot thereunder are a consolidated object, i.e. it represents grounds for a land plot to be a part of a consolidated real estate complex (Lutovinova et. al., 2016).

We should note also that pursuant to clause 1 article 133 of the Civil Code of the Russian Federation, rules related to indivisible things apply to the consolidated real estate complexes too; hence, in future a consolidated real estate complex may not be divided into separate real estate objects, which may cause a number of difficulties.

Relationships of parts in the right of ownership in a consolidated real estate complex are regulated by the rules of chapter 16 and article 1168 of the Civil Code of the Russian Federation.

Based on the analysis of article 133.1 of the Civil Code of the Russian Federation, we may assume that a law maker provides the participants of civil commerce with several methods for things consolidation in a consolidated real estate complex, such as a physical method and a technological method. To recognize an immovable thing participating in civil commerce as a single object as belonging to a consolidated immovable complex, one of the below conditions must be satisfied:

1. Indissoluble physical or technological connection of the buildings, structures, and other things unified by the common purpose, including transportation, communications and utilities lines (railways, electric power lines, gas lines, pipelines, etc.);
2. Location of the buildings, structures, and other things unified by the common purpose on the same land plot (Letter from the Federal Service for State Registration, Cadaster and Cartography dated Mar-05, 2014 No. 14 ref. 02410-GE/14 // SPS "Konsultant Plus").

The applicant determines composition of the consolidated real estate complex, including objects to be included in a consolidated real estate complex, and information about technological connection, since the legislation does not provide otherwise.

It should also be noted that the Russian legislation does not require third persons' consent for consolidation of real estate objects in a consolidated real estate complex. However, the decision whether such consent has to be obtained is made on a case-to-case basis, accounting for the legal status of a real estate object to be included in a consolidated real estate complex.

### **Authors' Opinion**

In order to consolidate buildings, structures, and other things in a consolidated real estate complex, they do not have to be situated on the same land plot, since only indissoluble physical or technological connection of the buildings, structures, and other things unified by the common purpose may be a sufficient requirement. Physical method implies indissoluble connection of the elements within a whole and is achieved through consolidation of immovable and movable things for interaction for their common purpose or consolidation of movable and immovable separate things in a consolidated object of civil legal relationships through their placement within the limits of the same land plot for its use for the common purpose.

Technological method implies consolidation of movable and immovable things in complex combination with the common technological purpose of their use; railway technological complex, electric power lines, gas lines, pipelines, and others may be an example here. The components of a complex may not only be obviously linked, i.e. sit on the same foundation, have common mechanical fixture, etc., but also may have no obvious links and be situated at some distance from each other, yet function only jointly (Averchenko, 2005).

Having analyzed methods of physical and technological consolidation of things in a consolidated object of proprietary circulation, *i.e.* consolidated real estate complex, we may conclude that they may exist separately and be used at the owner's discretion. Several things have to be legally consolidated as a whole, *i.e.* the right of ownership to the combination of the above things as one immovable thing has to be registered in the Unified State Register of Rights to Immovable Property and Transactions Therewith. For the purpose of state registration of right to a consolidated real estate complex, information about real estate objects representing its parts should be available in the state real estate cadaster (Letter from the Federal Service for State Registration, Cadaster, and Cartography dated Mar-05, 2014 No. 14 ref. 02410-GE/14 // SPS "Konsultant Plus").

State registration of rights to a consolidated real estate complex is performed in accordance with the procedure set forth by the Federal Law No. 122-FZ dated Jul-21, 1997 "On State Registration of Rights to Immovable Property and Transactions Therewith" (Federal Law No. 122-FZ dated Jul-21, 1997 "On State Registration of Rights to Immovable Property and Transactions Therewith" // SPS "Konsultant Plus").

Legitimacy of formation of a corresponding consolidated real estate complex as a combination of immovable things is certified by registration of the right of ownership to such complex in the Unified State Register of Rights to Immovable Property and Transactions Therewith. At the same time, it is stated that state registration show single immovable thing representing combination of all real estate objects comprising a proprietary complex as a whole. When applying rules related to indivisible things to the consolidated immovable complexes, we should remember that they become a thing, which may not be divided in deed without damaging it, destroying it, or amending its purpose, and which is represented in commerce as a single object of proprietary rights.

In our opinion, to facilitate commerce, legal regime of a consolidated real estate complex should be simplified as much as possible and should allow the owner both to set it forth and to amend it by own initiative. Zh. A. Kolesnikova shares our point of view assuming that an owner of property should have not only the right to consolidate objects in a consolidated real estate complex at own discretion but also to terminate this regime later, *i.e.* divide it into components, and have a right to register separate elements comprising it (Kolesnikova, 2015).

As E. E. Yagunov rightly notes, discretionary nature lying in the very core of the consolidated real estate complex implies that persons involved in civil law relationships are free to consolidate their property in consolidated immovable thing at any time once they find such consolidation advisable. As for the mandatory nature, it should manifest itself primarily in establishment of mandatory cadastral registration of consolidated objects and state registration of rights to a complex arising due to such consolidation, which is aimed at stabilization of proprietary circulation (Yagunova, 2014). M. A. Dimitriev states that the main purpose of a complex object legal concept is to involve consolidated objects in civil commerce through consolidation and further transformation of separate rights to the constituent elements into consolidated absolute right (Dimitriev, 2011).

### **Problems related to exercise of provisions of legal nature**

Regardless of the fact that pursuant to common rules a simplified procedure of registration of a right of ownership to an immovable object is introduced, problems with registration of such object arise quite often when registering a consolidated real estate complex. At this stage, it is impossible to register a right of ownership to a consolidated real estate complex, since the Federal Law No. 122-FZ dated Jul-21, 1997 “On State Registration of Rights to Immovable Property and Transactions Therewith” contains no article on state registration of a consolidated real estate complex. If we assume that a consolidated real estate complex is created, *i.e.* constructed, we face a problem of such object technical or cadastral registration due to non-existence of statutes regulating the procedure of registration of several



interrelated immovable objects as a consolidated object. Moreover, a consolidated real estate complex consists of a combination of interrelated objects; therefore, it may not be commissioned before completion of construction of all objects representing parts of a consolidated complex. Currently, we are in a situation, when an owner of a consolidated real estate complex has to prove that he/she/it really owns such immovable object; this problem is related to the fact that statutory regulations contain no provisions related to a consolidated immovable complex.

We should also consider a case, when a company property is alienated under the guise of a consolidated real estate complex without protection of the creditors' rights and rights of employees working in the corresponding company (Vinogradova et. al., 2006). We suppose that in order to solve this problem, we have to provide the most accurate judicial interpretation of art.132 and art.133.1 of the Civil Code of the Russian Federation. For instance, in cases when proprietary complexes today are actually used in business activities as a part of a company and their owners bear liabilities related to operations of the above proprietary complexes, state registration of rights to the above complexes as consolidated immovable complexes is not allowed (art. 133.1 of the Civil Code of the Russian Federation), instead state registration of separate real estate objects as parts of a company property should be maintained.

Unfortunately, the Resolution of Plenum of Supreme Court of the Russian Federation No. 25 does not mention this problem. At the same time, this Resolution contains other important explanations related to legal regime of consolidated immovable complexes. In particular, cl. 39 of the Resolution emphasizes that a combination of buildings, structures, and other things unified by the common purpose, which are either situated on the same land plot or indissolubly connected to each other physically or technologically (*e.g.*, railways, electric power lines, pipelines, and other transportation, communications and utilities lines) may be recognized as a consolidated real estate complex involved in civil commerce as a single object (immovable thing). However, the right of ownership to the combination of the above objects as one immovable thing should be registered in the Unified State Register of Rights to Immovable Property. In absence of the above registration, such combination of things may not be recognized as a common immovable complex.

Another explanation is of substantial significance for proprietary circulation, pursuant thereto parts of a consolidated real estate complex (*e.g.*, transportation, communications and utilities line) may be situated on different land plots. Therefore, an authority performing state registration of rights to immovable property may not refuse registering rights to a consolidated real estate complex only because the corresponding objects are not situated on the same land plot, since such refusal will contradict the requirements of art. 133.1 of the Civil Code of the Russian Federation (cl. 39 of the Resolution).

## CONCLUSION

Establishment of rights to a consolidated real estate complex is of special interest for the owners of compound complex infrastructural objects if such assets are intended to be used as a consolidated object.

State registration of rights to a consolidated real estate complex fully excludes further sale of separate objects (elements) included in a consolidated real estate complex, since pursuant to article 133 of the Civil Code of the Russian Federation these elements lose attributes of independent things after registration of a complex. In this case, only the whole complex may be sold.

A consolidated immovable complex has practical importance, because by consolidation and use of a combination of immovable and movable things for the common purpose persons involved in the civil circulation obtain a new business unit, which represents an indivisible good having certain economic value.

Based on the above we may assume that introduction of a consolidated real estate complex as an immovable object in civil commerce does not solve such problems as legal regulation of such type of objects at the legislative level. The Federal Law No. 218-FZ "On State Registration of Real Estate", which became effective from Jan-01, 2017, does not fully settle legal relationships as referred to a consolidated immovable complex; therefore, we find it necessary to make amendments in the Land Code of the Russian Federation and Urban Development Code of the Russian Federation.

## *References*

- Averchenko N. N. (2005). Legal Regime of Complex Things: Author's abstract. kand. jurid. nauk. St. Petersburg State University, St-Petersburg.
- Dimitriev M. A. (2011). Real Property Complexes as Objects of Civil Law Rights: Author's abstract. kand. jurid. nauk. Ural State Law Academy, Yekaterinburg.
- Kolesnikova Zh. A. (2015). The Russian Civil Code Now Includes the Concept of a Single Real Estate Complex. Pros and Cons of the New Act. Access date: Dec-18, 2016 <http://www.advocates.su/>.
- Lutovinova, N.V., Neznamova, A.A., Kuleshov, G.N., Bulaev, V.A. and Shmyrev, D.V. (2016). The role of appraisal services when carrying out the state control over the use of land in Russian Federation. *Journal of Internet Banking and Commerce*, 21(S6), 11
- Lutovinova, N.V., Neznamova, A.A., Guryleva, A.A., Bolshakova, O.G. and Shmyrev, D.V. (2014) Fundamental legal principles for implementation of state control over land use in the Russian Federation. *Journal of Advanced Research in Law and Economics*, V(2), 136-146
- Neznamova A. A. (2016). Unified Real Estate Complex as an Object of Civil Law Rights. *Yurist*, 4, 15-19.
- Shershenevich G. F. (1995). *General Theory of Law: learning Aids: in 2 vols. (Vol. 2. Issues 2, 3, 4)*. Moscow: MSU College of Law, pp. 189.

- Skuratov, Y.I., Glazkova, L.V., Grudin, N.S. and Neznamova, A.A. (2016). The development of organized crime in Russia: A system analysis. *Russian Journal of Criminology*, 10(4), 638-648.
- Vinogradova, M.V., Kulyamina, O.S., Larionova, A.A., Maloletko, A.N. and Kaurova, O.V. (2016). The use of management of objectives method of attraction and evaluation of effectiveness of investments to the tourism and hospitality. *International review of management and Marketing*, 6(2), 241-246
- Yagunova E. E. (2014). Structure of the Single Real Estate Complex System as an Issue for Debate. *Vestnik Permskogouniversiteta*, 3(25), 141-148.

