

## Legal regulation of real estate appraisal services

Alla Andreevna Neznamova, Maria Aleksandrovna Volkova, Olga Sergeevna Smagina,  
Olga Vladimirovna Efimova

Russian State Social University, Moscow, Russia

### Abstrac

The aim of the article is to research the issues of civil law regulation of real estate appraisal services. The need to assess market, cadastral or other values is the cause of appraisal valuations' paramount importance for physical and legal entities. The increased concern in appraisal services may be determined by either legislative requirements or proactive initiatives aimed to protect ownership interests in purchase and sale bargains, in equitable property division, share allocation, property exchange, property donation, redemption of government or municipal property; rent registration; entering into inheritance; mortgage registration; assessment of real estate market value for tax administration, etc.

Keywords: appraisal process, appraisal service, appraisal (valuation), real estate, market value, cadastral value

Regulación legal de servicios de tasación de bienes inmuebles

---

## Resumen

El objetivo del artículo es investigar los problemas de la regulación del derecho civil de los servicios de tasación de bienes inmuebles. La necesidad de evaluar los valores de mercado, catastrales u otros es la causa de la importancia de las valoraciones de valoración para las entidades físicas y jurídicas. La creciente preocupación en los servicios de tasación puede estar determinada por requisitos legislativos o iniciativas proactivas destinadas a proteger los intereses de propiedad en las negociaciones de compra y venta, en la división equitativa de la propiedad, la asignación de acciones, el intercambio de propiedades, la donación de propiedades, la redención de la propiedad gubernamental o municipal; registro de alquiler; entrando en herencia; registro de hipoteca; evaluación del valor del mercado inmobiliario para la administración tributaria, etc.

Palabras clave: proceso de tasación, servicio de tasación, tasación (valoración), bienes raíces, valor de mercado, valor catastral

### 1. Introduction

#### 1.1 Introduction to the Problem

Since 2008, the provision of appraisal services has not been regulated in the Russian Federation directly by the Government. The government regulation and licensing of appraisal services are replaced by self-regulation.

Currently, the appraisal process in the Russian Federation is envisaged by the Federal Law of 29.07.1998 # 135-FL "On Appraisal Process in the Russian Federation" (hereinafter referred to as the Federal Law "On Appraisal Process in the Russian Federation").

Under Article 4 of the Federal Law "On Appraisal Process in the Russian Federation", appraisal titleholders are those physical entities who are recognized as members of self-regulatory organizations of appraisers possessing professional liability insurances. An appraiser is liable to provide appraisal services either independently, as a self-employed practitioner, or under an employment contract concluded between an appraiser and a legal entity.

Appraisal services are divided into mandatory and proactive (voluntary) practices. The mandatory character of appraisal services is evoked from Article 8 of the Federal Law "On Appraisal Process in the Russian Federation" and other federal laws (the Federal Law "On Enforcement Procedures"; the Federal Law "On Mortgage Securities"; the Federal Law "On Investment Funds", etc.). The most common types of mandatory appraisal comprise property deals pertaining to objects belonging to the Russian Federation, its administrative and municipal entities; redemption of shares by a joint stock company

at the request of shareholders; payment for shares (stock of shares) using non-monetary means with the aim to determine the property value to be contributed into the registered capital; mortgage lending; expropriation of property in favour of governmental or municipal needs, etc.

The proactive (voluntary) appraisal is conducted in cases where legislation provisions are not necessary, and such an appraisal protects one's interests or interests of third parties. Such cases include a consulting assignment produced in managerial purposes; assessment of the size of claims in property disputes (including judicial proceedings); valuation considerations to preparing financial statements in accordance with the IFRS requirements; revaluation of capital assets of legal entities, etc.

## 1.2. Importance of the Problem

There are a number of problems pertaining to rendering of appraisal services under the civil law regime which need a thorough examination.

Under Articles 11 and 12 of Part 1 of Civil Code of the Russian Federation, civil rights may be protected in cases threatening their violation, i.e. the presentation and judicial consideration of independent claims to challenge the validity of an object value being under appraisal and specified in a report of an independent appraiser are possible:

- if the summary report of an independent appraiser is mandatory to conclude bargains for entities specified by the legislation of the Russian Federation;
- if the summary report of an independent appraiser is not mandatory to conclude bargains, as well as in cases where the current legislation provides for an obligatory bargain conclusion on the price equal to the appraisal defined in the report of an independent appraiser, and the deal has already been made.

Consequently, the parties have the right to litigate an appraisal output while considering a particular dispute where an independent appraiser's summary report will be regarded as evidence.

It has been established that certain aspects of appraisal services are researched in works by Zhesterov P.V., Neznamova A.A., Starodumova S.J., Volkova M.A., Lenkovskaya R.R. (2017). Legal considerations of real estate regulation have been investigated by such scientists as Zolotareva A.E., Starodumova S.J., Neznamova A.A., Lenkovskaya R.R., Volkova M.A. (2017). Sitdikova L.B., Neznamova A.A., Volkova M.A., Starodumova S.J., Lenkovskaya R.R. (2017) emphasize a single real estate complex as a special sort of immovable items of property subjected to mandatory appraisal.

A range of research works analyze characteristics of land and the necessity of their valuation. These authors include such scientists as Lutovinova N.V.,

Neznamova A.A., Kuleshov G.N., Bulaev V.A., Shmyrev D.V. (2016); Lutovinova N.V., Neznamova A.A., Guryleva A.A., Bolshakova O.G., Shmyrev D.V. (2014).

## 2. Method

The methodological framework for this research comprises a range of theoretical and private law methods of scientific cognition. The principal methods include systematic and structural, method of analysis and synthesis, generalization and analogy as well as such special methods of cognition as formal legal, and the method of legal analysis. The combination of these methods made it possible to analyze the problem comprehensively: i.e. to identify specific issues in legal regulation of appraisal services, to analyze the legislation, judicial practices and scientific literature.

## 3. Results

Our research revealed that valuation of real estate is quite necessary both for legal and physical entities. It was determined that appraisal practices of real estate are subdivided into mandatory and proactive (voluntary) ones. Mandatory valuation of objects is provided by the legislation of the Russian Federation.

It was also established that parties have the right to challenge the result of an appraisal when considering a particular dispute, if an independent appraiser's summary report will be regarded evidence.

The procedure of claiming in settling disputes, pertained to define the cadastral value, is provided for in the Federal Law "On Appraisal Process in the Russian Federation". Article 24.18 of this law secures the mandatory claim procedure of litigating results of cadastral valuation for legal entities, and a voluntary claim procedure for individual entities. The judicial practices demonstrate that noncompliance with claiming procedure of dispute resolutions between legal entities, on issues of contesting the cadastral value, has become the major ground for courts to refuse reviewing of claims.

## 4. Discussion

It is inevitable to observe disputes related to cadastral appraisal of real estate. The fact is that since January 2015 amendments, made into the tax legislation (Tax Code of the Russian Federation), ensure the calculation of individuals' property tax on the basis of cadastral value, while market value may be significantly lower than the cadastral one. Therefore, the assessment of market value of real estate is necessary to establish its cadastral value. The appraisal data can be verified via electronic resources of Rosreestr (Federal Service for State Registration, Cadastre and Cartography) (Burova et.al., 2018).

Land appraisal is necessary both for legal (in order to incorporate this information into the registered capital, to calculate tax deductions, etc.) and physical entities (during privatization, registration of mortgages, etc.). Land valuation is also necessary for local authorities, municipal entities in cases of municipal lands sale. According to Article 66 of Land Code of the Russian Federation, the market valuation of land parcels is conducted according to provisions of the Federal Law "On Appraisal Process in the Russian Federation" and the "Manual on Market Valuation of Land Parcels" approved by the Resolution of the Ministry of Property of the Russian Federation (Resolution of the Ministry of Property of the Russian Federation of 06.03.2002 # 568-r "On Approval of the Manual on Market Valuation of Land Parcels").

Parcels of land are not the same, so the unique character of each individual parcel affects its value significantly. In land appraisal, it is worth to take into account such criteria as terrain type and shape of a parcel, transport accessibility and proximity to major highways, availability of reservoirs, vegetation, environmental issues, etc.

The problem of real assessment of cadastral value of land parcels is especially sensitive nowadays, and this is confirmed by judicial practices (e.g. The Appeal Decision of the Moscow Region Court # 33-19070; The Appeal Decision of the Moscow Region Court in the case # 33-15551/2014).

The foundations for revising outputs of cadastral valuation include:

- submission of unreliable information concerning cadastral valuation of land parcels;
- setting the same date of market appraisal of a land parcel in respect to the date of its cadastral valuation.

In order to litigate the cadastral appraisal results an individual has the right to apply to the Commission for consideration of disputes on cadastral valuation or to the Law Court. In accordance with Part 3 of Article 24.18 of the Federal Law "On Appraisal Process in the Russian Federation", it is not mandatory for an individual to appeal to the Commission in the course of pre-trial dispute settlement, an applicant, therefore, has the right to apply to the Court directly.

The Presidium of the Supreme Arbitration Court of the Russian Federation has formed, in its Resolution # 913/11 (the Resolution of the Presidium of the Russian Federation # 913/11 in the case # a27-4849/2010) the legal opinion, which determines that the legislation does not prohibit any possibility of cadastral value estimation of land, registered in the National Cadastre of Real Estate, by means of specifying its market value. The Court resolution on the market value of land is the basis for charging a cadastral registration agency with the duty of updating the National Cadastre of Real Estate via inputting new information into the database

and domestic territory development on the living standards, social attitude and from the moment of judicial resolution entry into force.

Land disputes often appear when one party hires some appraisal company to value a land parcel, but the other one seeks for a different appraiser. As a result, both the plaintiff and the defendant submit two different summary reports to the court. An output of appraisal is a piece of intellectual work and may vary considerably despite the fact that appraisers are obliged to use appropriate techniques and to perform valuation according to the established Federal Appraisal Standards (Naser et.al., 2018).

Investigating the problem in details, it is necessary to consider the purposes of appraisal, which differ not only in their economic content but also in such essential features as duration of assessment period, i.e. its temporal conditions (current prices; short-, medium-or long-term estimates), the scope of ongoing assessment (single, selective limited, continuous), required background information, etc. All these issues give way to assume that differences in purposes of appraisal make use of different data resources and procedures of valuation of real estate items (Lebedev O.I., 2010).

It seems reasonable to survey certain issues in estimating the value of objects using mandatory and proactive (voluntary) valuations performed according to the Land Law as an example.

The initial auction price of land parcel owned by the government or municipal body is set under provisions of §12 of Article 39.11 of Land Code of the Russian Federation. An authorized body assigns the market value of such parcel either under provisions of the Federal Law "On Appraisal Process in the Russian Federation", or as the cadastral value, if the results of the national cadastral valuation had been approved not earlier than 5 years before the date of the decision to hold the auction.

The initial auction price for the right to conclude an agreement to lease a parcel of land owned by the government or municipal body is set either in amount of annual rent estimated under the Federal Law "On Appraisal Process in the Russian Federation", or in the amount of no less than 1.5% of the cadastral value of land, if results of the national cadastral valuation had been approved not prior than 5 years before the date of the decision to hold the auction.

The exceptions are provided by §15 (Article 39.11) of Land Code of the Russian Federation which states that in case of holding an auction for the right to conclude an agreement to lease a parcel of land in purposes of a complex territory development or individual farming (auctioning in accordance with §7 of Article 39.18 of Land Code of the Russian Federation), the initial price of the auction lot is set as an amount of the first rental payment specified as an

output of market valuation.

The establishment of market value of land parcels and real estate items attached to them is obligatory, especially, if these objects are used in entrepreneurship, for example, in hotel business (Kryukova et.al., 2014), with the exception of immovable items of real estate transferred free of charge into the government or municipal ownership; under conclusion of a contract to exchange the land parcel owned by the government or municipal body into a privately owned plot of land (Article 39.22, §4 of Land Code of the Russian Federation). In this case, these facilities are subject to mandatory valuation to declare their market value.

## 5. Conclusion

To sum up, it should be noted that when various bargains retaining real estate are conducted, a certain type of value is applied, and this clause should be reflected in the relevant contract. Therefore, to avoid disputes, it is necessary to specify in contract the type of appraisal to be conducted. If there is no indication of the type of value to be applied in the contract, the market value shall apply.

In conclusion, the appraisal services represent a special instrument and are applied in various fields of social life. Unfortunately, the statistical figures show that compensation of harm, prosecution of appraisers are extremely difficult (Svirin et.al., 2017). In terms of Land Law application, the reliability and objectivity of appraisal services influence national and public interests in general, as the taxable base on the property tax of individuals depends directly on the estimated market and cadastral value.

## References

- Burova I.L., Lavrentieva M.S., Lenkovskaya R.R., Malcev V.A., Kuleshov G.N. 2018. Legal Regulation of E-commerce. *International Journal of Engineering & Technology*, 7 (3.15), 222-225.
- Kryukova E.M., Sokolova A.P., 2014. Assessment of efficiency of the hotel management by a Russian company. *World Applied Sciences Journal*, 30(30), 51-54.
- Kurbanov, A.S., Lenkovskaya, R.R., Lutovinova, N.V., Zolotareva, A.E. and Zhesterov, P.V. 2018. Information security and the Internet. *International Journal of Engineering and Technology (UAE)*, 7(3.15), Special Issue 15, 273-276.
- Lebedeva, O.I., 2010. Issues concerning real estate appraisal in the context of market commodity and monetary relations. *Problems of modern economics*, 2 (34).
- Lutovinova, N.V., Neznamova, A.A., Guryleva, A.A., Bolshakova, O.G.,

- 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*, 5(2), 136-146.
- Lutovinova, N.V., Neznamova, A.A., Kuleshov, G.N., Bulaev, V.A., Shmyrev, D.V. 2016. The role of appraisal services when carrying out the state control over the use of land in the Russian Federation. *Journal of Internet Banking and Commerce*, 21(Special Issue 6).
- Naser, A.A., Lavrentieva, M.S., Bateeva, E.V., Dzhavakhyan, R.M., Burova, I.L. 2018. Intellectual property in Russia: the correlation of private and public elements. *Revista Espacios*, 39 (41), 9.
- Sitdikova, L.B., Neznamova, A.A., Volkova, M.A., Starodumova, S.J., Lenkovskaya, R.R. 2017. Establishment of rights to consolidated real estate complex. *Man in India*, 97(22), 135-145.
- Svirin, Y.A., Mokhov A.A., Gureev V.A., Shestov S.N., Shilovskaya A.L., 2017. Proof and evidence in cases involving compensation for damage caused to health or life of a citizen as a result of the use of drugs for medical use. *Journal of Advanced Research in Law and Economics*, 8(1), 250-260.



