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**The real property in the system
of the objects of Civil Law**

This article devotes to a place of real property objects in the system of objects of civil law. The object of civil rights is where civil legal relationship occurs. In the Republic of Kazakhstan there is an active formation and development of the market of real property. The property takes an important place in civil circulation. The specificity of the legal regime of real estate is the limitation of rights in relations developing between the entities over real estate.

Key words: objects of civil rights, real estate, legal property regime, the real estate market.

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**Жылжымайтын мүлік объекті
азаматтық құқық объект
системасы**

Бұл мақалада жылжымайтын мүлік объекті азаматтық құқық объект системасында қаралған. Азаматтық құқық объекті дегеніміз азаматтық құқықтық қатынастар пайда болғанда туындайды. Қазақстан Республикасында жылжымайтын мүлік нарығын белсенді түзету мен дамыту қолға алынып жатыр. Азаматтық айналымда жылжымайтын мүліктің алатын орны ерекше. Жылжымайтын мүліктің құқықтық режимінің ерекшелігі субъектілердің арасында жылжымайтын мүлікті шектеудің құқықтық қатынастары болып табылады.

Түйін сөздер: азаматтық құқықтың объекті, жылжымайтын мүлік, жылжымайтын мүліктің режимі, жылжымайтын мүлік нарығы.

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**Место объектов недвижимости
в системе объектов
гражданского права**

В данной статье рассмотрено место объектов недвижимости в системе объектов гражданского права. Объектом гражданских прав является то, по поводу чего возникает гражданское правоотношение. В Республике Казахстан происходит активное формирование и развитие рынка недвижимости. Недвижимость занимает особое место в гражданском обороте. Специфика правового режима недвижимости заключается в ограничениях прав в отношениях, складывающихся между субъектами права по поводу объектов недвижимости.

Ключевые слова: объекты гражданского права, недвижимое имущество, правовой режим недвижимости, рынок недвижимости.

THE REAL PROPERTY IN THE SYSTEM OF THE OBJECTS OF CIVIL LAW

The real property in system of public relations has a special place, with the functioning of which are somehow connected with life and work of people in all areas of business, management and organization. This property forms the central element of the whole system of market relations. Real property is not only the most important item that meets the diverse needs of people, but at the same time income-generating capital in material form. In the science of civil law, under the object of civil rights understood to mean the material and spiritual benefits, about which subjects of civil law enter into a legal relationship. Immovable things are objects of civil rights, and their legal status, as well as the turnover of the conditions subject to special rules established by the legislation.

There are different ways of things classification. One of the most important and common is the division of things on movable and immovable. The importance of this classification is big that the famous pre-revolutionary jurist P. Tsitovich named his unit the «supreme» [1], and Professor I. Pokrovsky, analyzing the differences in the regulation of movable and immovable, pointed to the special importance of real property as the most important object of a national heritage [2]. The origin of this classification – in the objective nature of the things themselves. According to Professor G. Shershenevichas of the beginning of the XX century, the fundamental difference between the movable and immovable things formed «as a result of the prevailing value of the land, and why real property transactions are always different from the transactions of movable» [3]. The terms themselves – «estate property» and «immovable property» – indicate on the thing's characteristics. If the movable thing can be moved without damage to its integrity and purpose, the immovable usually can not be moved, in principle, or it can not be moved without having any harm or damage. At the same time the damage occurs because of that the immovable thing has the inextricable link with the land. Thus, as a criterion of the conceptual division of things on movable and immovable, as a rule, in favor of their relationship with the land, the ability (or inability) to be moved without significantly compromising their integrity and purpose.

The current civil law does not contain an exhaustive list of properties. Although Art. 117 of the Civil Code of the Republic of Kazakhstan and a number of other regulations are listed the most

important properties, the list of immovable property still open, since the concept of property is determined by the legislator through the indication of the most significant signs of the real estate (a strong link with the land, the inability to move without causing disproportionate damage to their destination).

Along with this already formed practice of civil turnover allows to highlight the most important properties. According to article 117 of Civil Code of the Republic of Kazakhstan there are: land, buildings, constructions, perennial plants and other assets, firmly connected with the land, i.e. objects, move of them without disproportionate damage to their purpose; apartments and other premises, as well as non-residential premises, which are apart of the condominium object, recognized as independent objects (types) of real estate, if they are in individual (separate) ownership; to real estate equated also subject to state registration of aircraft and sea vessels, inland navigation vessels, swimming object «river-sea», space objects, linear part of main [4]. Legislative acts to real estate can be attributed the other property. As we can see, the current civil law operates in three categories: «real estate», «immovable thing» and «immovable property». All three categories, as follows from the context of Art. 117 of the Civil Code must be considered as synonyms. However, the Civil Code of RK in general is based on the consideration of the real estate as a thing (except for the concept of the enterprise as a property complex, which includes items such as property rights). It means that the whole concept of property does not apply to property rights. However, such an approach to the understanding of the real estate is not exceptional. Thus, in certain legal systems in the formulation of the concept of property legislator assumes the immovable property, that is, the property could be classified as proprietary rights. All of the above definition of real estate does not give any idea about their general features, allowing properly combine them into one concept. According to Y. Zharikova and M. Masevich, «the only feature making kin these objects – their an inextricable link with the land as the spatial territory – is outside the above legal definitions» [5].

Let us see what there is common in all the groups of objects that can take them to the property. One of the most common doctrinal explanation is a statement about the special significance of these objects to the economy, their high cost and, as a consequence, the need for the public interest in increasing reliability of the rules of civil turnover. «However, in legal literature, there are other explanations of causes of selection of real estate as a special object of civil

rights. So, K. Sklovsky believes that «there is no reason to believe the cause for the special position of property in the turnover of its direct, immediate value.» According to his opinion, a decisive qualitative difference, which allows to turn real estate into a means of sustainability through credit mortgage is «visibility», i.e. stability and public character in this sphere [6].

On this occasion, O. Skvortsov wrote: «Paying tribute to correctly noticed aspect by K. Sklovsky of real estate mortgage as the properties of the real estate turnover, it should be noted that this approach is associated with only one of the functions that performs real estate – with its ability to provide financial resources [7]. Meanwhile this function has other purposes. Property has a whole set of other qualities more important than its ability to intensify the economic life of the state. Inability to find a positive law the formal features that combine various properties in an integrated system, leading some researchers to the conclusion that the legal property regime does not depend on its natural characteristics. As a unifying feature of real estate and the cause of allocation of property into a special legal concept of the features of the organization of the real estate turnover. As the real estate regime endowed the company as a property complex (n. 1, Art. 119 of the Civil Code of RK). The enterprise as a property complex includes not only immovable by nature things (land, buildings, etc.) but also the property that can be moved without causing disproportionate damage to its intended use and, moreover, property rights and obligations (rights of claim, liabilities), intellectual property and cash equivalents, individualize the company, its products, works and services (trade name, trademarks, service marks) [4]. The totality of mentioned things, property rights of binding nature and exclusive rights considered by the legislator in the indivisible unity that allows the enterprise as an object of civil rights of a single legal regime – in this case, the legal regime of property.

At the same time, the contractual rights and obligations that are part of the enterprise are not things in the strict sense, as such, and are not exclusive rights. As noted by V. Dozortsev: only as an element of the enterprise as a set of its contractual rights and obligations, exclusive rights may be regarded as forming part of the object of ownership. In the isolated form of obligation as claims and other rights to the objects that have no real character, cannot possibly be among the objects of property rights.

The company as a special property complex cannot be considered either as a property or as the

object of the things that object of property rights and other rights [8]. This statement is due to the fact that the structure of the enterprise as a property complex form not only things, but also other property, which is intended to act as the object of the relevant civil rights, such as exceptional – the right to a company name, trade mark and other.

As noted by B. Vitryansky, regulation of legal regimes and the conditions of turnover of individual objects of property are non-uniform. «And in some cases, such non-uniformity is inappropriate and not understandable reference to the characteristics of certain types of real estate» [9]. This position seems reasonable. For example, if the land can belong to one or another person on the basis of property rights, the right of permanent (perpetual

use, the right of lifetime inheritable possession, the building, structure or premises may belong to subjects of civil turnover on the basis of property rights, the right of economic management and the right of operational management. The differences in the terms of property rights that may arise for various properties, causing a fair criticism, and therefore makes suggestions about how to resolve the different modes that characterize the legal status of real property. Resolution on the possibility of a clear definition of the list of real estate facilities has not only theoretical but also practical significance. The professional literature also notes that the establishment of a single regime of rights in rem in respect of different properties will contribute to the predictability and stability of their turnover.

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