

FIG
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**Presented at the FIG Congress 2018,
May 6-11, 2018 in Istanbul, Turkey**

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**EMBRACING OUR SMART WORLD WHERE THE CONTINENTS CONNECT:
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INSTITUTIONAL CHANGES IN THE RUSSIAN MARKET OF LAND AND REAL ESTATE

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The MAIN DIRECTION of INSTITUTIONAL CHANGES in the RUSSIAN REAL ESTATE MARKET

- ➔ change in the real estate **financing system**, especially in the real estate reorganization of the housing construction
- ➔ change in the real estate **registration system**
- ➔ changes in the evaluation system, including strengthening the state role in **cadastral appraisal** of real estate
- ➔ amendments in **taxation** of purchase-sale transactions of real estate
- ➔ changes in **notarial certification** on certain types of transactions
- ➔ ...???



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CHANGE IN THE REAL ESTATE FINANCING SYSTEM

Establishment of a single institution for the development of the housing sphere via JSC became the main organizational and managerial novation. It was done on **'Agency for Housing Mortgage Lending' (AHML)** the basis of the Federal law of July 13, 2015 No 225-FZ "On Promoting Development and Raising Effectiveness of Housing Sphere Management and On Introducing Amendments into Certain Legislative Acts of the Russian Federation".

All shares of AHML belong to the Government of Russia and their transfer, pledge, and other administration can be implemented only on the basis of the federal legislation.

Primary target of the single institution for the development of the housing sphere is **promotion of housing construction** (including construction of economy class housing, rented houses) with the help of mechanisms envisaged by the Federal Law No 161-FZ of July 24, 2008, "On Promoting Housing Construction." Thus, AHML took over responsibilities of the Federal Fund for Promoting Housing Construction liquidated on September 1, 2016.

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REFS: WHAT WAS AND WHAT HAS CHANGED? (1)

Recently, the Russian government was preoccupied with the issue of **hoodwinked investors** and as a result strengthened its control over shared-equity construction of residential buildings, therefore, a Law on participation in co-investment construction No 214-FZ was passed

By amendments effected from October 1, 2015, tougher requirements were introduced towards **insurance companies** providing third-party liability for developers.

According to the amendments, these insurance companies must have:

- (1) **licence** to perform voluntary property insurance and
- (2) boast of **own funds** no less than RUB 1 bn (previously RUB 400m) with charter capital of no less than RUB 120 m.

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REFS: WHAT WAS AND WHAT HAS CHANGED? (2)

Federal Law No 304-FZ of July 3, 2016, was adopted “On Introducing Amendments in the Federal Law ‘On Participation in Shared Construction of Blocks of Flats and other Real Estate Property and On Introducing Amendments into Some Legislative Acts of the Russian Federation’ and certain legislative acts of the Russian Federation.”

These amendments entered into force on January 2017 and aimed at finally settle relations between client and developer and cut off all **dishonest developers**.

Russia will have unified **register of developers** attracting funds from citizens on the basis of co-investment contracts in shared-equity construction of blocks of flats and other real estate property. All register information must be open to public and uploaded in internet.

The Law also determined additional requirements towards to the minimum size of the **charter capital** of these developers (RUB 2.5 to 1.5 bn depending on the area of all shared-equity construction belonging to developer and other related to it legal entities).

REFS: WHAT WAS AND WHAT HAS CHANGED? (3)

A **special compensation fund** was established aimed at additional protection of co-investors. It is formed from mandatory contributions (payments) made by developers attracting funds from citizens.

The size of contributions can not exceed **1% of planned construction cost** of a block of flats and (or) other real estate property indicated in a project declaration of the developer.

The fund can accumulate **RUB 30 – 35 bn.**

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REAL ESTATE REGISTRATION SYSTEM (RERS)

Change in RERS is due to effective from January 1, 2017 of the Federal Law No 218-FZ of July 13, 2015 “On State Registration of Real Estate Property.”

The former Federal Law No 122-FZ of July 21, 1997 “On State Registration of Real Estate Property and Transactions with It” became invalid from January 1, 2017 (according to Law No 361-FZ of July 3, 2016).

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RERS: WHAT HAS CHANGED? (1)

There were two real estate property bases and two documents for real estate property due to the fact that real estate property was registered in Unified state register of the real estate property and a land plot under each construction facility was registered in *State cadaster of real estate property*.

A new unified information base - ***Unified State Register of the Real Estate Property*** - began to act from 2017.

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RERS: WHAT HAS CHANGED? (2)

A unified procedure - this is innovation according to the new law - the state cadaster account of real estate property and state registration of real estate rights became.

The fact that completion dates were extended by half year means that the new registration system is not perfect.



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RERS: WHAT HAS CHANGED? (3)

New Law envisages **reduction** of the list of documents required for the state registration of rights. For example, legal entities will not need to submit charter documents.

According to an important novation, Certificate of registration of real estate property will be replaced by **an extract** from Unified State Register of the Real Estate Property.

Now the registrar will bear **personal responsibility** and will have to compensate the applicant all incurred losses in full from the RF budget.

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CHANGES in the real estate evaluation system (REES)

In the field of valuation activities, it is Federal Law No 237-FZ of July 3, 2016 on **State Cadastral Valuation** which came into effect on January 1, 2017.

The state cadastral valuation includes procedures:

- (1) for **taking decisions** on carrying out thereof for the purposes provided for by the legislation of the Russian Federation, including taxation based on market and other data related to economic parameters of utilization of a real property unit,
- (2) **determining** the cadastral value and
- (3) **approving** of the results of cadastral valuation.



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REES: WHAT HAS CHANGED? (1)

State cadastral valuation is carried out by decision of the state executive authority of a constituent entity of the Russian Federation (region), which entrusts a budget-funded entity founded by the region with an authority to carry out cadastral valuation.

Such an entity is not in a position to enter into agreements on carrying out evaluation as a performer in compliance with the legislation of the Russian Federation on valuation activities, while its employees who are directly engaged in determining the cadastral valuation are not allowed to determine the **market value** for the purpose of contestation of the cadastral valuation.

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REES: WHAT HAS CHANGED? (2)

The budget-funded entity is responsible for activities related to determination of the **cadastral value**. Losses which may arise due to violations related to determination of the cadastral value are compensated in full at the expense of the entity proper with a **subsidiary responsibility** of the subject of the Russian Federation in respect of obligations related to indemnification of such losses providing insufficiency of the entity's property in cases provided for by the civil legislation.

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REES: WHAT HAS CHANGED? (3)

The **cadastral value** is determined in accordance with the guidelines for state cadastral valuation to be carried out by the budget-funded entity. That entity **has no right to engage other persons**, but its own employees to carry out jobs and (or) services related directly to determination of the cadastral value.

The final document prepared on the basis of valuation outputs is a **report**.

The authorized body of the **subject of the Russian Federation** **approves** the outputs of the report by endorsing a relevant document on the results of determination of the cadastral value.

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REES: WHAT HAS CHANGED? (4)

The results can be disputed in court or a commission established by the authorized body of the subject of the Russian Federation by legal entities and individuals should their rights or obligations be concerned and by state and local authorities if a property unit is in a state or municipal ownership.

Preliminary application to the commission is not required for legal recourse.

PROPERTY TAXATION: IMPORTANT CHANGED (1)

Tax Code of the Russian Federation was supplemented with Article 217.1 on the specifics of taxation of individuals' incomes from sale of real property (it is applied to property units which were bought from the beginning of 2016).

(1) The minimum period of property ownership needed for a subsequent **tax-free sale is 3 years** for property units received in ownership through succession by inheritance or on the basis of a gift deed from an individual recognized as a family member and (or) next of kin of that taxpayer in accordance with the Family Code of the Russian Federation as a result of privatization of property and assignment of property under a life estate agreement and **5 years in other cases**.

(2) If the **taxpayer's incomes** from sale of the real property unit are **less than the cadastral value** of that unit as of January 1 of the year in which state registration of assignment of ownership rights to the property unit took place multiplied by a decreasing coefficient of **0.7**, for taxation purposes the taxpayer's incomes from sale of that property unit are made equal to that value (that is, 70% of the cadastral value).



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PROPERTY TAXATION: IMPORTANT CHANGED (2)

As per Article 220.3.1 of the Tax Code of the Russian Federation in buying housing in ownership, individuals have the right to claim a property-related **tax deduction** in the amount of actual expenditures made on such a purchase, but no more than RUB 2m.

The tax authorities published explanations that if such housing is bought by spouses it is considered a **joint property**. The deduction will be calculated on the basis of the value of expenditures of each spouse. The expenditures need to be certified by **payment documents**. Also, the expenditures can be determined on the basis of the spouses' statement on distribution of their expenditures on purchasing of the real property unit.

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CHANGE IN NOTARIA CERTIFICATION (1)

The Law No 391-FZ of December 29, 2015 on Amendment of Individual Statutory Acts of the Russian Federation established mandatory notary certification for some types of deals. They include deals with shares in the joint ownership rights, including those on land and real property purchase and sale deals where the owner is a minor or partially incapacitated person. The norm in question which is important to the real-estate market is justified by the need to protect the rights of owners of apartments from “apartment raids” in selling of micro shares and step up protection of vulnerable categories of people.

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CHANGE IN NOTARIA CERTIFICATION (2)

In fact, a **mala fide purchaser** may buy an insignificant share in an apartment (for example 1/30) to get the right to live there and then **creates unbearable living conditions** to make other co-owners to sell their shares at prices below the market ones.

Another option may consist in making other co-owners of the apartment to buy the share of the mala-fide purchaser at a price, which is **above the market** one. The notary certifies the deal if the owner of the share has duly notified other co-owners of the future sale of its share.

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CONCLUSION:

INSTITUTIONAL CHANGES ARE A REACTION TO THE COMPLEXITY OF THE MARKET MECHANISM, THEY MAKE SPECIFIC PREREQUISITES, BUT NOT GUARANTEE THE SUCCESSFUL FUNCTIONING OF THE REAL ESTATE MARKET.

THANK YOU VERY HUGE FOR YOUR ATTENTION!

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