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## Federal Rules and Practice in the Field Of Land Rent.

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### ABSTRACT

The increased dynamics of Federal legislative process in the sphere of regulation land relations, and assignment Constitution Russian Federation land legislation to joint jurisdiction of Russian Federation and its subjects become the reason for strong changes of laws and regulations Stavropol territory. The above fundamental changes legislation is had determined by relevance for thorough analysis legal regulation of land relations, especially in the field of regulation land rents.

**Keywords:** Land Code, the rent, the judicial practice.

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## INTRODUCTION

The multifaceted nature of land relations, due to the special situation of the earth being and natural object, and immovable property, determines the ratio of different forms of development of legal relations in the field of land use. In accordance with article 72 of the Constitution of the Russian Federation in joint conducting the Russian Federation and the constituent entities of the Russian Federation are the questions of ownership, use and disposal of land; delimitation of state property; land law. According to the joint jurisdiction of the Russian Federation and subjects of the Russian Federation are had published in the Federal laws and adopted in accordance with them laws and other regulatory legal acts of constituent entities of the Russian Federation.

In the second half of 2014, was accepting by eight Federal laws that made significant changes to the Land code of the Russian Federation. The most dramatic changes introduced by the Federal law of 23.06.2014 No. 171-FZ "On amendments to the Land code of the Russian Federation and certain legislative acts of the Russian Federation, which entered into force on 01 March 2015. Reform were subjected to the procedure of formation of land plots; the redistribution of lands in state or municipal ownership and land plots in private ownership; the transfer of land plots in Federal ownership, municipal property or property of constituent entities of the Russian Federation, as well as other areas. In addition, there is an extensive transitional provision to facilitate the implementation of new rules and procedures.

## MATERIALS AND METHODS

Introduced new provisions concerning the rent of land. Now the tenant in the case of a contract of lease of a land plot being in state or municipal ownership for a period of more than five years are entitled to transfer their rights and obligations to third parties without the consent of the lessor, assuming his notice. Early termination of the lease of the land for a period of more than five years at the request of the lessor is permissible only based on a court decision with a substantial breach of the lease by the tenant. It is had established that the amount of rent is an essential condition of the contract of lease of a land plot (clause 12 of article 22 of the Land Code of the Russian Federation).

Analysis of the legislation in the field of legal regulation and law enforcement practice showed the following.

General rules on the subject of rent are contained in Chapter 34 of the Civil code of the Russian Federation (civil code), including rules regarding the tenancy of land. In accordance with article 606 of GK of the Russian Federation under the lease contract, the lessor undertakes to provide the lessee (hirer) property for charge in temporary possession and using or in temporary use. According to the article 607 of the civil code, the lease can be transferred to the land plots and other separate natural objects, enterprises and other property complexes, buildings, constructions, equipment, vehicles and other things that do not lose their natural properties during their use. Part 2 of the article provides that separate laws can be established peculiarities of lease of land plots and other separate natural objects. As such legislative acts are the Land code of the Russian Federation [1], the Forest code of the Russian Federation [2], the Federal law "On concession agreements" [3], the Federal law "On special economic zones in the Russian Federation" [4], and others. The right of delivery of property in rent belongs to its proprietor.

## RESULTS AND DISCUSSION

According to paragraph 2 of article 22 of the Land code, land plots, except those specified in paragraph 4 of article 27 of the Land code of the Russian Federation, can be furnished by their owners in rent in accordance with the civil legislation and the Land code. For the land leased, the rent will be charge. Federal regulations governing the rental for land in state or municipal ownership, are also contained in the Land code of the Russian Federation, namely in art. 39.7, which establishes that the rental for land in state or municipal ownership is determined in accordance with the basic principles of determination of the rent established by the Government of the Russian Federation. In the case of a contract of lease of a land plot being in state or municipal ownership, the auction for the right to conclude a lease agreement of a land plot the size of the annual rent or the size of the first rental payment for a land plot is had determined by the results of this auction.

At the same time, law-enforcement judicial practice is not uniform and constant. Famous decision of the Presidium of the SAC dated 17.04.2012 № 15837/11 and from 17.12.2013 № 10782/13, in which was formulated the following position: the amount of rent for the land related to public ownership (incl. municipal, of the property of constituent entities of the Russian Federation and the lander, the state ownership on which is not differentiated), may not be higher than the rates established by Decree of the RF Government dated 16.07.2009 № 582 "About the main principles of determination of the rent by the lease of land plots in state or municipal ownership, and on the Rules for determining the amount of rent and the procedure, conditions and term for rent payment for land owned by the Russian Federation for lands in Federal ownership. This legal position has become mandatory for the lower courts upon posting on the website of the SAC of the first of the above resolutions of the Presidium of the Russian Federation – 22.09.2012.

However, since the abolition of the Supreme Arbitration Court and transfer its powers to the Supreme Court of the Russian Federation, the position of the higher judicial instance has changed:

- The Federal legislator, securing the principle of self-determination by the subjects of land relations of the amount of rent a rental agreement (paragraph 4 of article 22 of the Land code of the Russian Federation) and providing the relevant public authorities or local governments (depending on the type of the right of ownership of the land) powers on legal regulation of the question of the procedure for determining the amount of the rent, did not limit the rights of subjects of the Russian Federation in this matter, as evidenced by the absence at the Federal level, a single calculation of the rent.
- The decree of the RF Government No. 582 contains no requirements about the inadmissibility of establishing rental rates for the land, which is the property of RF subject, as well as for the land, the property is had not delimited, above the rates established for lands of Federal ownership.
- As follows from claim 1 of the Rules for determining the amount of rent and the procedure, conditions and term for rent payment for land owned by the Russian Federation, approved by the Resolution above mentioned, they contained provisions apply only to land owned by Russia and located in Russia. Concerning a public ownership resolution of the RF Government No. 582 shall apply only in the part they approved the main principles of determination of the rent.

Thus, previously effective approaches SAC, described in the decrees of the Presidium No. 15837/11 and No. 10782/13 essentially can be considered invalid. Some jurisdictions have already started to develop such practices, in particular in the East Siberian, Volga and North Caucasus. While in some cases, the appeal courts have explicitly recognized a change in the approach of the Supreme court to the interpretation of the norms of RF Government Decree No. 582 (see Of the decision of Arbitration court of East Siberian district on 02.04.2015 in case number A74-4216/2014 and from 30.04.2015 in case no A58-2563/2014).

The Supreme Court of the Russian Federation in Definition from 16.09.2015 No. 32-KГ15-12 softened previously expressed position regarding the Decree of the RF Government No. 582. In particular, he pointed out that the maximum rents established by the Government of the Russian Federation for some cases renting land plots in Federal ownership, "provide guidelines" for all other public entities. Finding that the rental rate established by local governments (5 %) exceeds the rates laid down in similar cases by the public authorities of the Russian Federation and the subjects of the Russian Federation (2 %), the court concluded about the violation of the principle of prohibition of undue preference, which is enshrined in the Resolution No. 582.

However, it is undisputed that by virtue of paragraph 1 of article 39.7 of the land code of the Russian Federation the principles of determining the Government of the Russian Federation must approve the rent for land plots in state or municipal ownership. The principles, which establishes the order No. 582, are binding when determining the rent for the land that are in public ownership, in all cases, when the size of the Board establish the competent authorities as regulated prices. This legal position can be seen in not only legal acts but also the acts of the judicial practice, including that set forth in the aforementioned Decree of the Presidium of the Russian Federation of 17 April 2012, No. 15837/11. If the parties entered into a lease agreement after the entry into force of the Land code of the Russian Federation, the rent on it is adjustable, that is had determined by an act of the public body. The adoption by authorized bodies of the legal acts that modify the normative established rental rate or the method of their calculation entails a change in the lease

terms. Moreover, this change occurs regardless of the will of the parties and without making the text of treaties changes based on of these legal acts.

Thus, the Resolution of the Government of the Russian Federation No. 582 of the establishment of the basic principles of determination of the rent is mandatory when using all lands in state or municipal ownership, in cases when in accordance with the law the amount of the fee shall be subject to appropriation by the respective competent authorities.

### CONCLUSION

- The amount of rent under the lease of land owned by the state (municipal) ownership is determined according to the procedure established by the authorized body based on relevant Federal law, which entered into force after conclusion of the contract, even if at the moment of conclusion of the contract, this procedure has not yet been set.
- If the rent for lease of state (municipal) property is had determined by the results of trading, regulated rents does not apply. Rent under the contract concluded at the auction, not subject to normative regulation on the part of public education. It develops in the course of trading, depending on market prices. The rent change is within the time and in the manner provided for by the terms of the contract.
- The rent for the land plots in public, but not Federal ownership may exceed the rate, established for regulatory land Federal property. Approved by the Decree of the RF Government dated 16.07.2009 No. 582 principles do not contain provisions on the inadmissibility to set the rate of the rent for the land which is the property of RF subject or municipal property, as well as for land plots, state property is not delimited, higher rates, allowed for lands of Federal ownership.
- If the act of the authorized body include various methods of determining the rent for publicly owned parcels that leads to the establishment of different fees for the same land, the court finds the act invalid with respect to methodologies, providing for higher fees. The act of the authorized body, including various methods of determining the regulated rent for public land. The result of which establishes a different lease payment for land classified in the same category of land used or intended for the same types of activities and provided for the same reasons, evidence of creation of discriminatory conditions, and violates the principle of prohibition of undue preference. Such an act not consistent with paragraph 8 of part 1 of article 15 of the Federal law from 26.07.2006 № 135-FZ "On protection of competition" and the Decree of the RF Government dated 16.07.2009 No. 582.
- If Federal law providing for the need for state rent regulation, entered into force after the conclusion of the lease contract and the act does not specify that it applies to relations arising from previously concluded contracts, in accordance with paragraph 2 of article 422 of the Civil code of the Russian Federation conditions of the said agreement of rent remain in force.

### REFERENCES

- [1] Land code of the Russian Federation of 25.10.2001 № 136-FZ (as amended on 28.11.2015) // collected legislation of the Russian Federation. 2001. No. 44. St. 4147.
- [2] The forest code of the Russian Federation of 04.12.2006 № 200-FZ (as amended on 13.07.2015) // collected legislation of the Russian Federation. 2006. No. 50. St. 5278.
- [3] Federal law of 21.07.2005 № 115-FZ (as amended on 28.11.2015) "On concession agreements" // collected legislation of the Russian Federation. 2005. No. 30 (part II). St. 3126.
- [4] Federal law of 22.07.2005 № 116-FZ (as amended on 13.07.2015) "On special economic zones in the Russian Federation" // collected legislation of the Russian Federation. 2005. No. 30 (part II). St. 3127.