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# **REAL PROPERTY MANAGEMENT**

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Teaching and methodical manual includes the course of lectures for all subjects of «Real Property Management» course. The lectures can be used by both an instructor to deliver lectures and students for self-study of «Real Property Management» course and preparation for passing an exam.

This manual corresponds to the state educational standard of Kazakhstan Republic and it is recommended for students of economic specialties and real estate agents.

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## INTRODUCTION

Along with development of real property area in Kazakhstan issues dealing with property objects management become very topical. It especially concerns commercial property. As it is profitable the commercial property becomes an important investment medium under modern conditions.

In the market there emerge an increasing number of the investors, wishing to invest their money in the commercial real estate. Because of it carrying out of the analysis of investment appeal of objects of the commercial property, i.e. estimation of characteristics of conditions of functioning of the object, defining investments profitability is actual. Such analysis will be the most important for an investor if quantitative value of the investment appeal is defined, allowing ranking the real estate presented at the market. On the other hand for the proprietor or the commercial property object manager, wishing to attract investments or to sell their object profitably at the market, it is important, that the indicator of investment appeal takes on a higher value. For this the proprietor has to manage the object on the basis of investment appeal in a specific way. The given problem is especially urgent for the objects of the commercial real estate which are in ownership of the industrial enterprises. Low investment appeal and frequently inefficient control system of these objects does not allow developing them. In existing scientific working-outs on managing and investments in the real property one does not pay a due attention to the aforementioned issue. Therefore under modern conditions for efficient control of the commercial property objects working out of methodical recommendations to create the mechanism of such control is urgent. Application of the offered mechanism will allow the proprietor (or management company) of real property objects to increase a management efficiency of the commercial property objects for investment purposes and thus, it is more favourable to alienate objects of the real estate in the market or to involve additional investments into real property. The quantitative assessment of investment appeal of the commercial real estate will allow the investor to rank the objects of real property analyzed for the purpose of capital investment and to choose the most favourable among them, and it also can serve as an additional criterion for a number of participants of the market of the real estate (appraisers, realtors, etc.).

## TOPIC 1. REAL PROPERTY

### 1.1 Basic real property concepts

Division of things into movable and immovable ones is a new one for Kazakhstan and owing to this it is not developed enough and inconsistent in legislation as well as civil law doctrine and enforcement practice. Nowadays it is possible to tell about two basic problems of classification of things into movable and immovable ones for the Republic of Kazakhstan legislation: 1) concept definition of “movable” and “immovable” things, 2) distinctive features of legal regime of each category of things. The notion and structure of immovable things (real property, real property) in general are in par. 1 Art. 117 of the Civil code of the Republic of Kazakhstan (further CC). The real property are: parcels of land, buildings, works, perennial plantations and other property strongly connected with the land, i.e. the objects, which movement without a disproportionate damage to their function is impossible. Literal interpretation of this regulation of the law allows asserting, that the real estate list is exhaustive. The legislator, while formulating this rule, has used not concrete and detailed list (what seems difficult to do), and has made the rule, following which it is possible to define immovable things in practice without much difficulties.

The judgment stated by us is contrary to opinion that the real property list in the CC is approximate one. This attitude is quite widespread in Kazakhstan. The materials of a recent published conference also state it.

The statement about the open list of the real estate is also characteristic for the Russian civilistic doctrine. For example, L.V. Tshennikova distinguishes the following characteristic features of the real property:

1) taking into account by the legislator, while rating things as immovable, natural properties is last, in particular, necessity of their being at the same place;

2) use of the list method which is not exhaustive to determine the range of immovables by the legislator;

3) legislator establishes a special legal regime of real property which is based on necessity to ensure stability of the rights to this property and define a special order of disposal of it.

In Kazakhstan civil law science they pay less attention to mentioned peculiarities of real property. For example, according to R.A. Mametova there are the following distinctive features of real property from movable one:

1) attachness to the land;

2) special legislative requirements for registration of the real property transactions;

3) accrual of the right of ownership (derivative proprietary interest) of real property from the moment of registration in the order established by law;

4) preservation of the law of the location of real estate when there is change of a residence of its owner.

The expressed point of view is concordant to opinion of both Yu.G. Zharikov and M.G. Masevich who explain separation of the real property from other property by importance for a national economy of available natural resources, close connection of other real estate with parcels of land, and also relation of the most valuable and socially important objects to it. It, according to the authors, demands a special regulation of participation of the real estate in a civil turnover that is reflected in peculiarities of the content of many legal relations, in special order and form of conclusion of contracts which subject is real property, in establishment of special rules for acquisition of real property rights and in a number of other cases. At the same time it is especially emphasized, that the legal regime of some kinds of real property essentially differs from each other.

In our point of view, the opinion on the approximate (unclosed) list of real property objects is based not on the statement mentioned above in par. 1 Art. 117, but on the content of par. 2 of the same article of the CC according to which they also equate liable to the state registration aircrafts and sea-going vessels, vessels of internal water navigation, ships of «river-sea» navigation, space objects to immovable things. At that legislative acts can be used to relate other property to immovable things.

Let's analyse the content of corresponding directions of the law.

In our opinion the main difficulty of interpretation and application of pars.1 and 2 Art. 117 of the CC, consists in the last sentence of the par. 2 of this article. If a literal interpretation of par. 1, as it has already been mentioned above, lets tell about an exhaustive list of real property, and the first sentence of par. 2 about equating things movable by their nature to immovables, then the meaning of the second sentence of par. 2 of Art. 117 cannot be explained logically. We suppose that its correct interpretation consists in that the list of movable things which are equated to immovables can be defined additionally by legislation.

Here it is important to draw a distinction between concept of immovable things proper and things to which legal regime of real property is applied till certain degree but which are not as such in essence. Such approach is confirmed by the rule stated in par. 6 of Art. 1 of the Decree of the President of the Republic of Kazakhstan from December 23, 1995 of No. 2723 «About the mortgage of real estate». According to it the real property: parcels of land and also buildings, works and other property strongly connected with the land, i.e. the objects, which movement without a

disproportionate damage to their function is impossible. This statute is concordant with par. 1 of Art. 117 of the CC in the redaction of the law of March 2, 1998.

Coming back to real estate structure, it is necessary to answer the question: what, proper, is the concept of the real property under the civil legislation of the Republic of Kazakhstan?

It is quite obvious, that the basis of the real property concept is the land, more correctly - parcel of land. Traditionally in all countries the land is special object of the property right and other proprietary interests. In Kazakhstan the legislative base of involving of the land in a civil turnover is just being created. For a rather short time period they have approved three standard legal acts, regulating land relations along with the CC: 1) The decree of the President of the Republic of Kazakhstan, which is valid the law from December 22, 1995 of No. 2717 About the land; 2) The law of the Republic of Kazakhstan of January 24, 2001 of No. 152-II "About land"; 3) the Land code of the Republic of Kazakhstan from June 20, 2003 of No. 442-II. At the same time principal changes in definition of the parcel of land have not been made. Thus, in accordance with par. 13 of Art. 12 of the LC parcel of land is allocated within closed borders part of the land, assigned by the established order in the LC to subjects of land relations. As the general rule for the land the government property legal regime is established. Private-law (civil law) regime of parcels of land is permitted on the bases, conditions and within the limits established by the LC (Art. 3 of the LC).

In Kazakhstan the land, according to purpose, is divided into the following categories (par. 1 of Art. 1 of the LC):

- 1) lands of agricultural purpose;
- 2) lands of settlements;
- 3) lands of industry, transport, communication, defense and used for other nonagricultural purpose;
- 4) lands of specially protected natural territories;
- 5) lands of forest resources;
- 6) lands of water resources;
- 7) lands of reserve.

Besides as the object of civil turnover becomes the land of not all categories but only of some of them (see pars 2-4 of Art.23, Art. 24 and others of the LC) and to the question what parcels of land are in civil turnover and whether they can be the subjects of contracts there is still no accurate answer in legislation. Instead of defining legislatively categories of parcels of land which can be objects of the right of ownership and other proprietary interests, the LC only tells what purposes the corresponding parcels of land are given for. Consequently it is possible to conclude



that parcels of land of any category can be given to private subjects. It is important that their use answers the purposes specified in the law (arts. 23 and 24 of the LC).

There are no doubts that by the right of ownership and the land tenure right one can give parcels of land, rated, for example, as lands of agricultural purpose, some lands of settlements, nonagricultural purpose, of forest and water resources. These parcels of land, practically irrespective of their belonging to a certain category, potentially can be subjects of settlement of civil law transactions. There emerges a certain question about parcellation of specially protected nature areas, lands of health-improving, recreational and historical and cultural purpose. There are examples of such parcellation in court practice. Thus, in the determination of civil chamber of Almaty regional court at the suit of public prosecutor's office they have legitimated the Akim's decision of Talgar region to make a parcel of land in the «Belbulak» hole a private property of Mr. The court, on the basis of effective at that moment sect.1 of Art.18 of the Decree about the land, has issued a ruling, that Mr. Z. is the proprietor of a dwelling house and in this case the acquirer also gets the right of ownership of the parcel of land.

Without going in the analysis of expediency and reasonableness of the given decision we will just point to the fact that in our legislation, the legal doctrine and practice treatment of parcels of land as belonging of buildings and works, rather than vice versa prevails. At the same time it is important to note that there is a certain legislative base for turnover of parcels of land. The main part is played here by norms of the Decree about mortgage and those of the LC. However paradoxical to notice, the CC plays an insignificant role in a real property turnover and the most part of its norms about contractual commitments dealing with passing of property in somebody's use or ownership can be enforced only by analogy, using general provisions, for example, of purchase and sale and property lease, their separate variants.

So, parcels of land are the main subject of real property. But the concept of the real estate is not reduced by no means to the land which is its very important component, but does not cease to be only one of its subjects. In this respect a serious enough problem is other real property which we are inclined to define it as belonging to a parcel of land (Art.122 of the CC), but not vice versa.

There are only general provisions regarding definition of things belonging to parcel of land, related to subjects of the real estate, in the legislation. Thus, in accordance with par.1 of Art.117 of the CC of the RK they are: buildings, works, perennial plantations and other property strongly connected with the land, i.e. the objects, which movement without a disproportionate damage to their function is impossible. Par.1 of Art.130 of the Civil Code of the Russian Federation there is more comprehensive list of real property that includes besides parcels of land also

subsurface areas, isolated water bodies, forests, perennial plantations, buildings, works. Thus, both normative acts connect the concept of the real property with the land (parcels of land) and contains the rule following of which one can define directly in practice if one or another thing is immovable.

The interesting peculiarity of civil law doctrine regarding this issue was mentioned by E.A. Sukhanov who points to the fact that in a classical turnover the land (parcel of land) is always acknowledged as the main thing and as belonging -- the objects situated on it including real estate. In the conditions when the state is acknowledged as the sole owner of the land in the domestic law and order buildings, works and similar objects located on the land after which in case of their alienation the land tenure right automatically followed began to be considered as the main object. In so doing the author tells, that the land private property recognition should automatically entail the return to a traditional approach under which alienator and acquirer of property subject will, first of all, decide the issue of fate of the land which it is situated on. As we have already mentioned, we adhere to this position too and we believe that the further development of a civil turnover of parcels of land and other property subjects will press for revision of position regarding definition of parcels of land as belonging of buildings and works.

The given point is confirmed by the legal regulation practice of developed countries. For example, Ingo Risch says, that «...on built-up land lots in essence all buildings and parts of buildings from the proprietary point of view are of the same legal belonging (*rechtliches Schicksal*), as a parcel of land itself... It means, that after development works become according to § 93 of the CC (of Germany - S.S.) an essential component of a parcel of land and automatically are passed into ownership of a ground landlord (see § 946 of the CC) ».

It is necessary to tell, that consideration of a parcel of land as the main thing is characteristic in certain degree for the Republic of Kazakhstan legislation too. The given circumstance is clearly shown by the example of acquisition of rights to unauthorized constructions (Art. 244 of the CC).

It seems to us it is worth paying attention to real property structure which was offered by S.A. Belyatsky. In this case the real property is land with all its constituent parts. Besides parcels of land S.A. Belyatsky ranks as the real property: those things which strongly and forever (perpetually - S.S.) connected with the land: works as a stone house; then all constituents of the land - constructions, and, at last, such subjects, as a growing forest, a standing corn and so on which make till separation moment the single/whole thing with the land. In Belyatsky's opinion the real property includes the space above the area - an air column - and under the area, at the depth of the earth as far as the interest of authorized person goes.

This doctrinal provision corresponds to one of provisions of the efficient legislation. Thus, according to Art. 42 of the LC proprietary interests for a land lot cover a surface soil layer, closed water bodies, forest plantations which are within the boundaries of this plot. At the same time a proprietor of land lot or a land tenant has the right to use everything that is situated above and under this area at one's discretion and without any permission if such use does not infringe the rights of other people or the state including the rights to bowels, waters, forests and air space. Thus, it is possible to conclude, that the belonging concept is realised in the LC concerning the natural properties of parcel of land mentioned above. It will mean that when there is land lot alienation if other is not provided in deed of conveyance, the acquirer gets all properties of the land lot stipulated by Art. 42 of the LC and there is no need in special provision for it.

As natural properties of land lot should be also defined that what is under the surface of parcels of land: the bowels, mineral resources and mineral raw materials and so on. For these parts of the real property the legislator has established several modes. Firstly, a mode of the right of state ownership as a whole bowels, including mineral resources on bowels (par. 3 of Art. 6 of the Constitution of the Republic of Kazakhstan and also par. 1 of Art. 5 of the Presidential Decree which is statutory "About bowels and use of bowels"). Secondly, mineral resources, being separated from the parcel of land or a site of bowels, a) act as movable things, b) the corresponding legal regime is applied to them and c) can belong to the user of bowels on right of ownership (Art. 5 of the Decree about bowels). Thirdly, the right of constant and free use of bowels is given to the user of bowels on the ground areas belonging to him on the right of the private property or constant land tenure, for mining of widespread mineral resources for one's own needs (par. 3 of Art. 10 of the Decree about bowels).

The case is more complicated regarding other properties of land lot, mentioned in par. 1 of Art. 117 of the CC. First of all it concerns considering as subjects of the real property buildings and works which can be: 1) on and under the surface of land lots, 2) intended for residence and have another purpose.

The legal regime of the constructions situated under the surface of land lot, is regulated by the Decree about bowels. Thus, in accordance with pars. 17 and 25 of Art. 1 of the Decree as use of bowels operations: works on construction and operation of underground structures not connected with extraction, for the general economic purpose, and also for burial of radioactive waste, harmful substances and waste waters act. Only Art. 19 of the Decree about bowels is devoted directly to regulation of the legal regime of land lot, in its par. 1 the rules of the Decree about bowels connected with extraction are applied to construction and operation of underground structures not connected with extraction, if other is not stipulated by legislation.

Par. 2 of the same article tells about the necessity of obtaining a license for building and/or for operation of the underground structures not connected with mining operations. The constructions and works which are situated on the parcel of land surface can be of two categories: intended for dwelling of people and nonresidential buildings and works. At the same time, if concerning housing premises the legislation is developed enough, then the majority of normative acts on nonresidential premises a) are mostly of by-law character; b) are intended for the property ranked as state ownership.

The enjoyment of property in housing premises is regulated by the Law of the Republic of Kazakhstan of April 16, 1997 of No. 94-I "About the housing relations". Their fundamental peculiarity is that all of them are directly intended for or are indirectly connected with the main goal - residence of citizens. But at the same time the Law "About housing relations" provides for possibility to use the mentioned objects also for other purposes not connected with residence. Thus, in accordance with par. 2 of Art. 19 of the law using of the dwelling or its part by the proprietor for nonresidential purpose does not demand the permission to do it of the public authorities, but can be done by the proprietor only following building, sanitary, fire-prevention and other compulsory norms and rules.

Sufficiently many questions including connected with real estate structure, were caused by introduction of «condominium» concept in the housing legislation. It worth disagreeing with the widespread opinion in our country that condominium is distinctive, objectively existing form of property. In our opinion it is more correctly to define it as ownership complex of the real estate. And it is here that «land lot - the main thing, and the rest properties are its appurtenances» concept collides with the current legislation this fact will be paid more attention to below.

Various plantations on the surface of the land lot by the civil law doctrine are considered as immovable things till the separation moment. There emerge practically no questions about those plantations that were seated by the proprietor himself and which are of artificial nature. Certain contradictions emerge in the legislation in case if plantations are of natural origin. For example - forests. In accordance with par. 3 of Art. 6 of the Forest Code of the Republic of Kazakhstan (July 8, 2003 of No. 477-II) forests are ranked as ownership of the Republic of Kazakhstan and can be given only by the right of forest exploitation.

We have a roughly similar situation with waters. Potentially the legislation does not exclude them from private property objects but at the same time it establishes state ownership regime for them.

As a special object related to real property an enterprise acts - as ownership complex (par. 1 of Art. 119 of the CC).

They expressed various opinions regarding recognition of the enterprise as real property in the literature.

In O.M. Kozyr's opinion the special nature of the enterprise as civic rights object consists in three qualities: 1) officially the enterprise is not mentioned in real property definition in the article 130 of the CC of the RF, but "introduced" in the article 132 which is put after the block of articles about the real property; 2) by its constituent elements this object is so heterogeneous, that rating it as one or another group of objects can be made only on the basis of its characteristic as a special ownership complex, but, not being based on the nature of its constituent elements, many of which, such as chose in action, debts, exclusive rights, are not the real property. The enterprise is the real property not by virtue of its inseparable connectedness with the land, but by the decision of the legislator to extend to this specific object the peculiarities of the legal regime established for real property; 3) the enterprise is object which is "missed out" of classification of immovable and movable things as it is not a thing, even a complex one. Further the author tells, that, having recognised the enterprise as the real property, hereinafter the CC does not make it to comply automatically with all general rules about the real property, but establishes a special, more formalized and strict regime for transactions with enterprises.

Both R.A. Mametova and B.V.Pokrovsky note two qualities of the enterprise as a special object of law:

1) this is not just one or several diverse things, but the uniform ownership complex usually including things as well as property rights and liabilities;

2) this complex is intended for entrepreneurial activity.

In our opinion, the enterprise as a special property complex cannot be recognised neither as real property, nor as object of the thing i.e. object of the right of ownership and other proprietary interests.

The given statement is connected with the fact that the enterprise structure as ownership complex is formed, not only by things, but also by other property which meant to act as the object of corresponding civil rights, for example, exclusive ones - the right to trade name, trademark and others. Besides, the ownership complex of the enterprise can also include debts, certain liabilities, and the right of ownership to duties is nothing else but a legal absurdity. Further, the concept of the enterprise itself includes qualities of both object and subject of the civil law and as a matter of fact, for example in case of settlement of transaction regarding the enterprise as ownership complex, it should be a question of several different legal situations:

- a) transfer of things (movable and immovable),
- b) transfer of debt,
- c) concession of claim,

d) lapse of exclusive rights and so on.

Thus, we have a transaction containing several law conceptions and constructions in it. Therefore, as far as we know, any attempt to make the state registration of an enterprise as the real property under Art. 119 of the CC and others, has not been crowned with success. The registering body has only succeeded to register the property proper in a narrow sense of the word (par. 1 of Art. 117 of the CC).

So, it is possible to make preliminary conclusions:

1) concept and structure of the real property includes a parcel of land and its properties: buildings, works, perennial plantations and other property strongly connected with the land;

2) regarding the land lot properties which is in private property one should make statutory provisions that all other things acting as the land lot properties somehow closed within the limits of the area water objects, forests, popular mineral resources should belong to the proprietor with all the ensuing legal consequences;

legal regime of the property should undoubtedly consider its natural properties and consists in two main moments: a) one should make legal a construction

3) about that that the real property is the parcel of land and its properties that strongly connected with the land and b) the rights to the real property, their acquisition, realisation and suspension directly depend on the state registration.

«Land lot - the main thing and the rest that connected with it closely and inseparably is its properties» concept should become the central part of the legal regime of real property. Anyway, that which focuses on the future development of civil legal relations with it. At the same time, the realization of this statement in practice will be complicated due to certain, first of all historical reasons. On the one hand, as we mentioned earlier, parcels of land had become the basic structural elements of a current concept of the real property, on the other - post-Soviet realities in certain cases exclude application of this concept. First of all, it concerns housing sphere (for citizens) and buildings, works and premises which are used for nonresidential purpose. The exclusion of land lots from the civil turnover has led to that it is buildings and works that began to act as the main things. Privatisation of these objects has entailed practically automatic provision with a legal title to land lot possession occupied by the corresponding building and work. In housing sphere this circumstance was aggravated more with the fact that the similar parcel of land was transferred not to one person, but to all those who privatised housing.

In considered situations «land lot - the main thing and the rest that connected with it closely and inseparably is its properties» concept cannot even begin to work. It meant for classical situations: originally a parcel of land is provided and next it is covered with properties. We had exactly the opposite situation: involvement of both

residential and non-residential stock in the turnover entailed the necessity of legalization and involvement of land lots in the turnover. Here another concept - complex thing concept comes to the aid. Par.1 of Art. 121 of the CC as a complex situation define a situation when heterogeneous things form the single unit allowing using it to its intended purpose defined by the combination essence, they are considered as one thing. In Kazakhstan its author as regards the real property is K.M. Ilyasova.

In our opinion the complex thing concept concerning the real property consists in the following. While realizing the rights to the real property (first of all to the land lot) the possessor of the right (mostly the proprietor) can establish a different legal regime for different structural elements which make the certain real property. For example, a parcel of land has one possessor of the right. A building erected on it – belongs to another or others. In this case the single concept of the real property as if break up into several constituents: land lot is one thing, building - another one. Each of these objects is of significance in its own right, for the turnover as well as for realisation of the rights to these things and for purposes of the state registration of the rights to them. It especially clearly shows itself in the condominium concept that we partly have touched upon earlier. In this case we have the very complex thing which is formed by several constituents:

- 1) apartments and/or nonresidential premises that are independent objects,
- 2) common property which is intended for service of the first category things (entrances, ceilings, communication lines etc.),
- 3) parcel of land where corresponding building and/or work is situated.

Thus, it is possible to conclude that «land lot is the main thing, and buildings and works are its properties» concept, firstly, should be intended mostly for the future relations in the real property sphere, and, secondly, should act as the general rule, another concept should become an exception to it - the real property concept as a complex thing.

One more important point of the real property concept under the legislation of Kazakhstan is the legal regime which established for the given object of the civil rights. The main constituent of the legal regime of the real property in our opinion is the present system of the state registration of the rights to it. As it has been noted earlier, it is in peculiarities of the state registration of the rights to the real property and the registration of the rights to equated by the CC immovable things aircrafts and sea-going vessels, vessels of internal water navigation, ships of «river-sea» navigation, space objects and other property (par. 2 of Art. 117 of the CC), that the most essential features of interpretation and structure of real property consist. We will illustrate this point by the current legislation of the Republic of Kazakhstan.

The state registration of the rights to real estate can be defined as publicly realized by means of bodies of the public power the open statement of connection of propriety interest of the person with the specific thing. The registration promotes achievement of several goals:

a) fixation of the moment of emergence of rights in rem. In other words, the registration of the rights to the real property is of lawmaking importance;

b) publicity, i.e. about presence of the proprietary interest in the certain thing at the concrete person becomes known for everybody, especially to interested persons;

c) individualization and concretization of the legal regime of real property. Objects of the registration are certain kinds of the subjective civil rights to the real property, change and termination of them as a result of transactions and other legal facts (pars 1 and 2 of Art. 2 of the Decree “About the state registration of the rights to real estate and transactions with it”);

d) the registration is made by drawing up a special written statement that is evidence of the existence of proprietary interest;

e) document about the registration of proprietary interest is considered as the main proof of its existence. The latter is of essential meaning for protection of rights in rem, disposal of right and other situations.

In turn movable things, as we have mentioned earlier, one can classify into two categories:

1) movable things, which the registration is needed for. In this case it is considered, that the real property legal regime is equated to the real property legal regime;

2) movable things, which the civil legislation establishes the general legal regime for, that does not require the registration.

Movable things, which the registration is needed for, can be quite different. Par.2 of Art. 117 of the CC of the RK ranks as such: aircrafts and sea-going vessels, vessels of internal water navigation, ships of «river-sea» navigation, space objects. At that legislative acts can be used to relate other property to immovable things. In our opinion one should distinguish between concepts:

1) registration of the rights to the real property

2) registration of the movable property.

One should note that the mentioned terms do not coincide with each other as by definition (form) as by content. If in the first case the rights act as objects of the state registration, in the second - things themselves. For example, par. 1 of Art.13 of the Law of the Republic of Kazakhstan from December 15, 2001 of No. 271-II “About the state regulation of civil aircraft” civil aircrafts of the Republic of Kazakhstan, the rights to them and the transactions made with them, are subject to an obligatory state



registration by the authorised body in the State register of civil aircrafts of the Republic of Kazakhstan. The state registration is accounting procedure by the authorised body of the right of ownership and other rights, and also encumbrances of civil aircrafts, in the State register of civil aircrafts of the Republic of Kazakhstan. The similar rules are provided for motor transport vehicles.

In our opinion, the state registration of movable property pursues different objects and is not similar to the registration of the rights to real property. In essence it can be called a technical registration of certain movable things. Such registration can influence only on realisation of the civil rights, but not on their emergence, change or suspension.

Thus the registration of immovable things has two basic differences from the registration of the rights to real property:

- 1) object of the registration of movable things is they themselves, but not existing rights to these things;
- 2) such registration is of no right originating importance, but is a necessary condition for realisation of the right of ownership and other of rights in rem to this property.

The latter point is confirmed by par.1 of Art. 8 of the Law of the Republic of Kazakhstan of June 30, 1998 of No. 254-1 “About registration of pledge of the personal estate”, according to which the legal effect of the movable property mortgage registration consists in that that it establishes priorities (date) of satisfaction of claims of one pledgee regarding the claims of other pledgees having pretensions to this property of the pawner, according to regulations of the CC and other legislative acts. So each preceding registered pledgee has a priority, when securing discharge of an obligation, over all subsequent registered pledgees, and also over all unregistered pledgees of the given property.

It is possible to make the following conclusions:

- 1) in the legislation of the Republic of Kazakhstan regarding the real property one should realise as a general rule the concept - parcel of land is the main thing and the rest constituents of the real property (par. 1 of Art. 117 of the CC) are its properties;
- 2) complex thing concept should be considered as an exception from the general rule and can be used in cases:
  - a) directly stipulated in the law
  - b) while establishing appropriation of land lot and its properties to various people;

the real property concept is of exhaustive nature, and things mentioned in par. 2 of Art. 117 of the CC should be acknowledged as movable things moreover having a legal regime different from the legal regime of immovable things;

3) it is inadmissible to consider an enterprise as real property (Art. 119 of the CC), which should be defined as ownership complex consisting of heterogeneous objects of civil rights (Art. 115 of the CC).

## **1.2 Concept and kinds of property**

Property exists since then when human being occupied land lot for the first time to build a dwelling and cultivation of foodstuffs. He cleared his lot, farmed, sowed and harvested. A specific character of this labour was in that that it was directly attached to its object - land. Unlike farming, another widespread kind of labour activity of an ancient human being - cattle breeding, was not attached to a certain parcel of land: a cattle owner could choose a pasture area freely. And to work on the land all the time, one needed the certain publicly recognised norms of mutual relations between the individual and social environment concerning a land lot he occupied. These norms are associated with the property rights. The real property market appeared much later when in a society commodity relations were formed and the need to exchange, sell and buy objects of real property emerged. Along with legal aspects the real property got its own economic aspect. As the economic category the property represents socio-productive relation regarding appropriation of objects of the external world by physical and legal persons, both natural and created by a human being. Legal registration of economic relations of the property by rules of law forms the concept of the property and legal sense as set of the rights of the owner, used by him in his external activity. The holder of the property right in this sense is called the proprietor.

Every object being in the possession of the proprietor can be related to the certain kind of the property which is conditionally subdivided, firstly, into the corporeal and intangible property, secondly, into the immovable and movable property. As a basis of division into corporeal and incorporeal property are physical properties of ownership object. On the one hand, there are materially tangible things which can be seen, touched by hands which physical properties and characteristics it is possible to define. This is corporeal property. On the other hand there are ideal ownership objects or incorporeal property. An ideal ownership object is obligatory confirmed by a written document (or a document prepared on a different data carrier), in the form of fixing of the corresponding rights to the objects which are in one's own or another's ownership. As an example of such securities it is possible to name a mortgage deed, a lease contract, a bill of loading. This is incorporeal property or the right of ownership.

The corporeal property and the right of ownership (intangible property) are two interrelated characteristics of the property subject. As property itself in a material form as the right to it is results of human activity, they have value estimation and can bring profit.

The criterium of division of the property into immovable and movable is direct connection of the object with land. As the real property they consider any property situated on the land surface and being its part regardless whether it is attached to it physically or not. The most important sign of the real property is its functional purpose - to be technologically attached to the land. The rest material objects not having such characteristic are real property.

Thus, each ownership object of possession falls under one of four varieties of the property according to two abovementioned classification signs:

1) Real estate, or the corporeal real property, includes parcels of land and other grounds, soil layer products; any other property attached to the land and strongly connected with it the space above and contents of bowels. Its basic features are immovability owing to attachment to the land and tangibility as a physical object. As a rule, objects of corporeal real property have individual signs.

2) Right to the real property or the incorporeal real property is a legal concept meaning the totality (set) of rights to the use of property; it is profits, advantages and benefits inseparably linked with possession, use and disposal over property. One should relate the rights to use the land while leasing it, a lifelong possession of a farm, servitudes (rights to a limited use of the land lot by one person belonging to another one), licences, rights to economic use of bowels, water and air space etc. to this kind of property.

3) Movable property, or the corporeal movable property, are material objects of possession which are not integral or forever fixed appurtenance of any object of the real property, i.e. things which can be carried or transported without loss of their essential properties or that able to move by themselves. The basic criterion, distinguishing a corporeal movable from a corporeal real property, is ability to change their location (relocatability) or transportability. This is industrial and office equipment, commercial stock of goods, works of art, jewelry, collections, cars, vessels, planes, furniture and house furniture, commercial prototypes, cash resources and much more. Unlike the real property, the objects of the movable property in most cases do not possess individual properties, hence, costs to replace them by a similar object are rather insignificant.

4) Right to the movable property or intangible movable property, is a legal concept, combining profits, advantages and benefits linked with possession, use and disposal of the movable property. Examples can be franchise agreements, trademarks,

trade names, concluded contracts, trust contracts, copyrights, rights to extractive natural resources etc.

### **1.3 Characteristic of the real property**

The main kind of property is the real property or corporeal real property. As the real property, according to the definition accepted in economic sciences, they assume the certain parcel of land and also all vegetation and all ownership objects which are located on, above or under its surface and which movement is impossible or is able to do an essential harm to these objects. The real property includes, on the one hand, objects of natural origin: natural resources, vegetable kingdom products, forest etc., on the other, - all that that is built or created by human hands: buildings and works, roads, communication, infrastructure, pits, mines, plumbings, lift devices installed in buildings, landscaping with a perennial cycle of development, seeds transplanted to the land, on-the-root harvest etc. For the real property constant technological, but not accidental physical attachment to the land is characteristic. Thus, a greenhouse constructed on the land lot, becomes a part of this land, i.e. the real property. But a tent, pitched for a night stop in the forest or in the field, is the movable property. In the legal respect a distinctive feature of the real property is «publicity of possession». By results of a transaction, a written document is drawn up, normally, it is notarized and registered in the special public register - land records or other special register of land lots and buildings, which everyone has access to. Public control over belonging and use of objects of the real property is achieved this way. The real property structurally includes physical constituents: land and constructions, and also the totality of ownership (legal) rights regarding these physical constituents.

The first constituent of the real property is parcel of land. It is a physical basis of spatial foundation, on or within of which all other objects of the real property are located. From the legal point of view land as property object is not only a part of area where people reside, buildings are located and plants grow but simultaneously it is the set of property rights. When a consumer buys a parcel of land, he gets the rights to possession of not only that that is situated on this area, but also of that that is under (the right to mineral resources) and above it (the right to air space). At the same time the right to the land is never absolute. The state always regulates its vertical component: bowels, air and water media. National legislations regarding this issue essentially differ from each other. Thus, in the USA the practical possession of an area is limited by 50 thousand feet under and thousands feet above the earth. In the majority of countries of Western Europe the rights to bowels belong to the state. Normally, they establish the concession regime of mineral survey and mining

operations, based on granting a special permission by the state. In many states of mineral deposits, in particular raw materials for the nuclear industry are legally declared the state ownership. The same can be said about the air space too. In Germany, for example, the public air space is everything that is above private interests of the proprietor of the land lot. In England, according to the law about civil aircraft, flights over any private property at reasonable, taking circumstances into account, height are permitted. In Kazakhstan nongovernment subjects of the ownership (private owners) of the land have the right not to all bowels corresponding to their land lot, but only to widespread mineral resources (clay, sand, etc.) deposits of coal, oil, ore etc. are not included in the structure of the real property of a private owner as well as air space above his/her area.

The important element of the property right to subject of real property is the right to water resources. It regulates the property rights as regards navigable and unnavigable water streams, stagnant reservoirs, ground water etc. The most complex of them is the property right concerning unnavigable streams. There are two types of national legislations regarding them. In the majority of national legislations there is a statute that economic use of unnavigable streams should not break or reduce the right to use this stream by other persons whose possessions are located downstream. A starting point of this legislation is a provision that the owner of land lot adjoining a stream has no property right to water. His property is soil, spreading to the middle of the stream. When water is frozen over, ice is considered a part of the land lot and therefore belongs to the owner of a bottom of the stream. The second type of the national legislation favours, as for the economic use of a water stream, the person, who was the first to operate the given water source. There are versions of legislation combining the first and the second approaches. The property rights concerning underground water streams are similar to the national property rights regarding unnavigable water streams, and concerning navigable water streams the rights of the owner of the land lot are limited by the coastline.

The second constituent of the real property is improvements on the land which are made by realisation of the technical, construction, reclamation works improving the quality of territory or of buildings and works located on it, and of soil layer too. Here two components are included: constructions on the land (buildings, works, roads, fences, etc.) and land improvements (drainage, land improvement, gas pipelines, gutters, telephone lines, access roads, etc.). All these works are also called the real property development.

The third constituent of the real property is movable structures connected with the real property, i.e. attached to the object that in turn connected with the land or is its constituent. Such attachment can be made as technologically as on the basis of a law or a contract. Plumbing installation and elevator facilities, fitment, heating

systems etc. are movable structures. Situations when the same object can be the movable property as well as a constituent of the real property are possible. For example, dishwashing device built in a wall of a house, is the real property element, at the same time a dishwasher standing in the kitchen, is the movable property. One should distinguish movable structures as elements of the real property from movable structures attached to leased property by a lease contract which are intended for the purpose of doing business. These objects are considered the movable property. If the improvements of the real property made by the leasee are inseparable from it the mentioned improvements are the real property too.

The forth constituent of the real property is the property right including the right of use, the right of possession, the right of disposal, the right of mortgage, the right of last will etc.

In world practice there are two basic systems of the laws regulating property relations, related with the real property. The first system rests upon the civil law which historical predecessor was the private Roman law. This system is called Romance-Germanic as it is mostly used by the countries of the continental Europe, Latin America, and also by the majority of the countries of Asia and Africa. It is, in whole, a guide for the countries of the Eastern Europe and for Russia too but with a number of stipulations. The second system is related to the common law which is used in England, in a number of the countries of the British Commonwealth of Nations and in the USA, it is called Anglo-American system. If the civil law source is the law and administrative acts of normative nature then the common law source is the judicial precedent. If the civil law uses abstract statements of legal principles then the common law, dealing with a concrete event, arranges it with rules of law. There are some countries where property relations are regulated by the rules of the civil law as well as the rules of the common law (for example, Denmark). In some states (for example, in Canada) in the one part of its territory (Quebec province) rules of the civil law are in effect, and in the rest territory - rules of the common law. The real property can be considered in two aspects: physical and economic. From physical characteristics viewpoint the real property is a separate spatially located object having the certain utility, i.e. ability to satisfy requirement of the concrete user at the given place and at the given period of time. As a physical object the real property has the following properties:

- immovability, i.e. constancy of location, fixation and nonmobility;
- uniqueness, i.e. individuality, singleness in its way;
- heterogeneity;
- durability of existence and operation.

Economically the real property is an object which demands a certain flow of investments directed to its preservation and development. It has certain value

estimation, can bring profit to its proprietor (user) and is characterised by the following qualities of economic order:

- rarity,
- lack,
- maturity,
- dependence on the object location (influence of quality and reliance of the land and objects on it).

#### **1.4 Classification of the real property**

The real property is heterogeneous by its structure, functions, ability to satisfy various requirements. In the western practice there are two basic approaches to its classification: from the point of view of acquisition of income from the real estate and from the viewpoint of functions it performs. Proceeding from ability to bring profit they distinguish inhabited, i.e. meeting requirement for habitation, and returning interest real property, i.e. satisfying the need in reception of a constant cash flow from its use. We note that at such division as inhabited the real estate acts for the final consumer (proprietor or tenant) whereas for an owner and entrepreneur it is the property bringing profit. The real property is divided into habitable and non-residential by its function. The latter in turn is divided into commercial, industrial, institutional and recreational real property, hotels and motels and also the real property of mixed usage. Residential real estate is represented by various kinds of detached houses, small family houses and block of flats intended for constant residence of families and individuals in them. It is connected with rent, building and operation of housing fund. As the commercial real estate they understand constructions for retail trade (shopping centres), offices for business, car parkings, gas stations and other objects of services sector, used for extraction of profit. The industrial real estate is industrial structures and the infrastructure, operating factories, industrial parks, storage rooms, specialised offices for the administrative personnel, etc. For this subtype of the real estate the object location of the real estate (proximity to transport arteries) is extremely important. The special subsection of the industrial real estate is the agroindustrial real estate represented by suitable for crop production and cattle raising areas. Hotels and motels are a special category of the real estate. Unlike the residential real estate, these objects are intended for temporary but not for constant residence. Moreover, supply and demand for housing, and for hotels depend on different groups of factors.

A recreational real property is connected with recreation sphere. It is a various constructions on the territory of health-resort zones, clubs by interests (for example,

business clubs, golf clubs, yacht clubs), stadiums, swimming pools and other sports and fitness complexes and entertainment complexes.

The real estate is buildings for governmental and municipal authorities, educational institutions, hospitals, sanatoria and other functions of special purpose. The real estate of the mixed usage is the combination of aforementioned types of the real estate. For example, buildings where on the ground floors there are shops or offices, and higher – inhabited apartments. Regulation of the real property. The real estate is not absolute. In each country there are certain kinds of restrictions concerning the property right. They can be originated from the state as well as from individual persons. As to the real estate these restrictions can be subdivided into three main kinds:

- 1) imposed by the law,
- 2) created by its proprietors,
- 3) imposed by creditors.

The restrictions imposed by the law, are connected with the sovereign right of the state to private property alienation. Such alienation of the land is intended for the public purposes (construction of public buildings, roads, communication, realisation of housing projects, etc.) and carried out only under the court decision. The court also appoints a special authorized person on estimation of the real estate cost which is paid in the form of indemnification to the former owner. The latter has the right to give notice of appeal concerning the size of the paid indemnification if it does not suit him.

The main restrictions imposed by the law are following:

- The restrictions connected with zoning which defines functional purpose of land lots. From the users' point of view, all land lots are divided into several groups: intended for residence, commerce, industrial and agricultural use. The zone laws regulate population density or «resident families» for the given territory, functional purpose of objects and transfer of an object of the real estate from one status to another (for example, alteration of an office premise in a retail outlet, a living space - in housing stock, and vice versa).

- Requirements regarding a green zone and landscape. A green zone means a part of a parcel of land used for greenery, parks, tennis courts and other recreational areas.

- Limits of the height of buildings. In many countries the legislation using both economic and administrative methods regulates height of buildings. An economic method is based on appraisal of construction of tall buildings.

- Limits imposed by the Building Code and/or rules which define building standards, requirements to building structures and materials, distances at which



objects of the real estate should be located from each other, etc. These documents demand that territory development is carried out according to building plans.

- Restrictions imposed by the Fire Code and/or other rules. In many countries the legislation demands obligatory check of fire safety condition every time the real property subject is bought, built or reconstructed.

- Other restrictions connected with change of borders of land lots, arisen owing to either a wrong delimitation of the given area, or as a result of action of natural processes (landslips, alluvia, soil erosion, change the course of the river, etc.). Besides, they regulate the rights of use of the real estate in connection with maintenance of a public order and protection of property, life, health, ethical standards.

2. The restrictions created by proprietors of the real estate, mean restrictions which are connected with a contract of usage another's property, i.e. servitude and licence.

- Servitude is the right to use the land for certain needs which can be provided by a property proprietor to another person. For example, the proprietor of the land can permit to lay an electric cable to a municipal services company through a part of his parcel of land. This is a share (interest) in another's real property. The most widespread kinds of the servitude are the right of use of roads passing through another's territory, the right to drainage, to erect posts for electric lines, the right to lay a pipeline or install a sewage system, etc. The servitude can be created by a contract of transfer of the property or a contractual agreement which oblige only contracting parties. Once established it cannot become invalid without its owner's consent. The servitude is established concerning an area, but not with respect to a person: being attached to the land, it passes from one owner to another one. The servitudes can be divided into positive and negative ones. A positive servitude is the right of a person who has it to perform certain acts to the detriment of another's property (right of passage). A negative servitude is the right to demand that the proprietor of the adjoining property has refrained from using it this or that way. For example, right of claim either not to build buildings and structures or to build only such that will not interfere with access of light and air to the area («servitude of light and air») or spoil a view.

- Licence concerning the real estate is the right by which one person receives powers to use the land of another person. It can be both in written and oral form. Unlike servitude, licence is personal and is used only by the person who has got it. It can be invalidated at any time.

3. Restrictions imposed by creditors, related to existence of lien. The latter allows a creditor to recover a debt, to demand the execution of debtor's commitments. Lien is not the property right to the object that it is related to. This is the right to a

compulsory clearing off his promissory note by the debtor by payment or accepting some claim.

### **1.5 The peculiarities of the real property as commodity**

A specific character of the real property mostly shows itself when it is used as commodity. The analysis of this peculiarity one should begin with a dual character of satisfaction of need for habitation: by means of acquisition in the property of object of the housing real estate and by means of acquisition of housing services on the terms of hiring or rent (the scheme 2.). Such duality is characteristic not only for housing but also for the rest kinds of the real estate. Is it necessary to become owner of a shop without fail in order to trade, or it is enough to rent this shop? It is clear that the regime of rent itself is not an obstacle at all for a normal trade. The case is the same regarding office premises: in economically developed countries the majority of quite thriving companies rent their offices, only the largest and prospering corporations are owners of their administrative buildings the major part of which is nevertheless leased. It is quite natural: they do not need the real estate by itself, for them it is not a direct economic benefit, but an obligatory condition of realisation of entrepreneurial activity. One simply cannot get along without it, this is a necessary factor of manufacturing that is to be used, but is not to be purchased. Thus, there are two kinds of the real estate as commodity: commodity - object (to acquire as a property) and commodity - service (for rent or lease):

- The real property – commodity

- The object (buildings, structures, premises)

- Services (possibility to use an object for definite purposes)

Duality inherent in the real estate - the goods, has one more aspect that it is possible to illustrate by an example of privatization of habitation. According to the law of the Republic of Kazakhstan «About privatization and denationalization of state property of the Republic of Kazakhstan» of August 1, 1991, citizens have got the right to certify housing premises they occupy. The privatised habitation can be the object of a commercial turnover that is the goods. It seems obvious, that in this case the object will be commodity, however such conclusion is fallacious. The explanation consists in that that the obligatory sign of any commodity - object is possibility to separate it in kind. Housing premises in apartment houses do not have this sign: all limiting them in space constructive elements (walls, partitions, overlappings) are house components as a whole and the certain premise (apartment) they cannot be related to: a ceiling of one apartment is simultaneously a floor of an apartment situated on the following storey; all walls are either mutual for the neighbour flats or are a fragment

of a house wall. The same thing concerns rooms in a shared apartment. Thus, a housing premise, being the object of the property and, hence, the potential goods, practically has no material embodiment (short of a floor covering, whitewashing on a ceiling and wall-papers on walls). Considering impossibility of separation of housing premises in kind, one should rank them as non-material assets as for category. While privatising an apartment or a room, the person receives not the property in its naturally-material expression, not «a physical body» of the real estate but the right of ownership, that is possibility to use this real estate in the form of the economic good, commodity or a source of income. If the property subject is a free-standing building or a structure in this case the object of the real estate and the right to it represent indissoluble unity. Only this variant of the real estate can be considered full-blown because it ensures realisation of his main right - the right of complete disposal of the property subject. For example, nobody can prevent a proprietor from carrying out replannings of his house (to add a storey, to attach a veranda, etc.), and the proprietor of a flat, with rare exception, is deprived of such possibility. He just can alter the layout by transferring nonstructural partition walls. Thus, the real estate - commodity can be present in the market as three modifications. Such form of commodity as the real estate - object, includes the right of ownership to it too (object cannot be sold without it). In an indissoluble unity the «real property» includes the rights of possession, use and disposal.

The real property – commodity

The real estate – commodity (when there is a possibility of separation in kind).

The right to the real property subject

Service (possibility to use an object for definite purposes)

## **1.6 The special features of the real property**

While considering the first special feature of commodity -- the real estate we should note:

a) principal attention to the housing real estate, in which its characteristics manifest themselves most frequently and most visibly;

b) complexity, heterogeneity of commodity – real estate demands definition of rights and their limits.

The second peculiarity – investment nature of this commodity. It is intended for durable use (it is related to commodity - object). It is durable goods which is not consumed in the course of its use. All changes in «a physical body» of the real estate, in primary natural and material properties are dictated, mainly, by action of the time

factor. The durability of the real estate means essentially different character of satisfaction of need. If, for example, foodstuff satisfies a corresponding need of the human being regularly then the need of habitation in the absence of restrictions regarding solvency can be satisfied just once and for all, as a result of the single action - to become the owner of a housing property. The same thing concerns other kinds of the real estate: many plants and factories, offices and banks, shops and warehouses having quite modern equipment, function in the buildings built at distant periods of time.

The third peculiarity – uniqueness of any property subject. The main reason of this uniqueness is the action of location factor. Even if buildings are erected by one standard project and by their natural and material characteristics, architectural and planning and constructive and technological solutions are identical, their value in use will never be absolutely the same because they are not located on the same parcel of land. When there is a common development the same houses adjoining by their end walls can be different by certain characteristics. These distinctions not always reach a significant size, but uniqueness of each object of the real estate does not cancel the given fact.

The fourth peculiarity - the real estate is notable for its high capital intensity. This is because a lot of material, financial and manpower resources are used to create it. The capital intensity of the main unit of the housing real estate - an apartment surpasses manyfold by this indicator per unit other investment goods: cars, radio electronics, etc. An economic grounding of such specific character of the real estate is obvious - «disposable» need satisfaction is equivalent to a corresponding increase in value. It means that other things being equal durable good demands more expenses. Besides the costs connected with process of creation of the property subject, there are considerable (both in absolute and in relative terms) transaction expenses connected with transfer of the goods from the seller to the buyer as a result of fulfilment of market transactions. The main factors defining high level of transaction costs, are: uniqueness of each of objects of the real estate, additional requirements at registration of transactions with it, obligatory state registration of object of the real estate, increase in duration and complexity of market transactions with the real estate etc.

The fifth peculiarity is of a principal nature - the real estate can be commodity at any moment of its life cycle. It means that one can put in a commercial circulation not only a completed structure but also so called «incomplete building». As is generally known, the utility of «incomplete building» equals 0; however this does not prevent it from remaining commodity. Though the true goods in such situations is not the object of the real estate (it is absent actually), and the right of ownership to it. The buyer of «unfinished building» thinks that realisation of this right will allow not

only to compensate expenses for completion of construction but also to receive benefit as a result of object use.

In turn such supposition is based on the possibility of long-term use of the property subject - either as economic good or as a source of income. The period of use in both cases surpasses manifold the time one needs to complete construction.

Acquisition of property rights to «incomplete building» for a subsequent sell of a completed object is theoretically possible but this variant occurs extremely rarely and mainly depends on the object location. Criterion of its acceptability is high profit from sales which is a consequence of a considerable excess of demand over supply.

However, if such sales opportunities are predictable, then the owner of «unfinished building» will prefer considerable financial costs for completion of construction by himself, instead of losing the property right and missing the future profit - market fluctuations are transient enough and at considerable volume of incomplete construction there is a problem of «missing» a favorable price situation.

This feature is inherent only in the real estate; it makes unique not only the real estate - object, but also the real estate - commodity. No other thing being incomplete can be a commodity. A specific character of the real estate manifests itself also further in process of fulfilment of its life cycle. If to make comparison with other goods, it is possible to note the following. The goods which are not durable objects can be sold for rather limited time period after manufacturing. It is the so-called working life which infringement in some cases can cause serious economic sanctions. The durable articles can be the goods from the moment of manufacturing till the appearance of the irreversible changes ruling out the possibility of further use (so-called disappearance of utility). And only the real estate possesses marketability before it is completed (unfinished construction object), at the moment it is finished (new construction object), and after it is completed (past construction object). It follows that the «marketability period» of the real property is maximal.

The sixth peculiarity is quantitative mismatch of quality characteristics of the real estate - commodity and real estate - the goods. If to agree, that the object is the finished construction building or structure then in this one physical object can include the set of the goods of various modifications. For example: there is a ground floor where there is a nonresidential premise with its functional purpose (shop, dry-cleaner's, laundry etc.) in a multistorey apartment house. Commodities in this case can be:

- all privatised flats (property rights to them);
- residence services provided as lease;
- residence services provided as lease;
- property rights to a built-in nonresidential premise.

Thus we have:

$$\{T_1, T_2, \dots, T_n\} \in S,$$

where  $T_1, T_2, \dots, T_n$  are various goods being the elements of the single object of the real property;

$n$  — total number of goods;

$S$  — the real property subject;

$\in$  — symbol of belonging.

It is necessary to recognise as distinctive feature of this conglomerate that any of the goods has no natural and material form as any of the objects of the rights cannot be separated in kind. Moreover, even if all these goods are sold a house will not become commodity.

The seventh peculiarity is a different marketability of various kinds and elements of the real estate. All goods of current consumption and long-term use can be sold and bought without special preferences and without any restrictions. However the case is different as for the real estate. There are some kinds of it which commercial circulation the direct legislative ban is imposed on or this turnover is connected with restrictions. Nowadays in the Republic of Kazakhstan there is no free purchase and sale of the land including parcels of land that are part of rural territories by legislation. As a result there is a situation, at which elements of the single ownership complex (the site and the object located on it) are separated as the goods. Land lots can only be rented and the commodity in this case is the rent rights. However, the mention interdiction is of no absolute nature: first, there are no restrictions for goods circulation of the land lots for individual housing construction purposes, and also regarding those where so-called «the second house» — a summer cottage, a country house is situated, a country house (limiting dimensions of such areas are restricted by the legislation); secondly, in the Republic of Kazakhstan in a free turnover there are municipal lands; thirdly, the privatized enterprises can be proprietors of the land lots they occupy in order and on the terms defined by the Decision the State committee of the Republic of Kazakhstan on privatization from 25.04.1996 of No.163, taking into account all mentioned above, it follows that for the real estate as ownership complex an incomplete marketability is characteristic.

The eighth peculiarity is lower liquidity of the real estate in comparison with other goods. As liquidity, as is generally known, they mean degree of convertibility of the goods into money. One should distinguish two aspects of the liquidity — qualitative and quantitative. The qualitative aspect characterises dependence of the liquidity ( $L$ ) on demand ( $AD$ ):

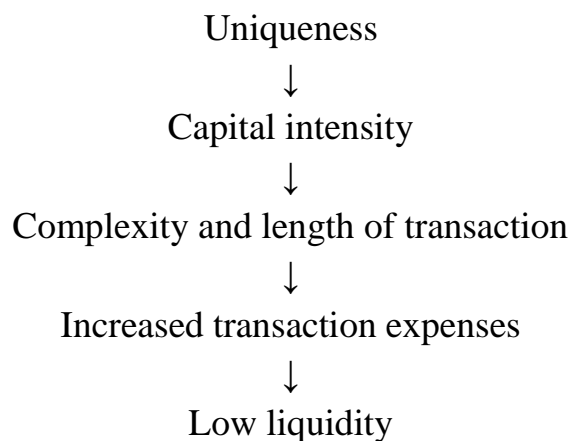
$$L = f(AD)$$

Between  $L$  and  $AD$  there is a direct dependence: any commodity is liquid as far as demand for it is active. If to consider, that  $AD$ , in turn, is connected by return functional dependence with a price level ( $P$ ) it is possible to write down:

$$L = f(AD) = f'(P)$$

$f'(P)$  expression means, that the value of  $L$  for the same commodity varies depending on fluctuations of  $P$ .

Quantitatively  $L$  is expressed in typical, for the certain market, time period of sale of the real estate (from occurrence of offer to sell till acquisition of it). Other things being equal for the real estate this time period will be more than of any other goods. It is connected with a combined influence of two other specific features of the real estate — uniqueness and capital intensity (as for transaction costs). Such dependence is shown in the form of the following structural and logical diagram.



The economic content of this diagram is expressed by B. Franklin's classical words: «Time is money». They can be considered as some kind of «liquidity formula». Taking all aforementioned into consideration it results that:

1. Market nature of the economy of the Republic of Kazakhstan is characterised by prevalence of the use of the real property as commodity and its specific character. Exceptions are: possibility when a person does not purchase the object of the real estate but builds it by himself; becoming owner of the property objects as a result of privatisation (free - habitation of citizens and compensated — industrial objects for enterprises). However the real estate acquisition as commodity prevails that enables its further use as the economic good or a source of income.

2. Not all of the presented features are characteristic only for the real estate, many concern all investment goods. However the set of specific characteristics affects only objects of the real estate.

3. All peculiarities of the real estate — commodity are defined finally by its properties as a thing. The economic content of these peculiarities is some kind of «superstructure» over material basis, cost interpretation of primary (natural) properties.

## 1.7 The real estate as a source of income

The final aspect of the analysis - consideration of special features of use of the real estate as a source of income.

Thereupon we will note at once the most essential statements, important for a subsequent description.

The first statement - far from all objects of the real estate are and can be a source of acquisition of income. The majority of objects of the housing fund which are given on the terms of rent, are not a source of income but the budget item of expenditure (nowadays reproduced actions as well as the main part of expenses on the housing service are not paid by tenants). The habitation which has passed into ownership of citizens as a result of privatisation, practically completely is used for purposes of residence of proprietors themselves and members of their families and acts as the economic good. Thus, «profitable potential» of the real estate if to consider only that variant of the income which it can bring to its proprietor - the rent - rather small.

The rent (Lat. redditam - given back) - a regularly received yield (a flow of payments) on capital, property, land, public bonds in the same time intervals.

The second statement — difference of the income received from the real estate and the one, brought with the assistance of the real estate. In the first case the real estate is the only factor of the income, in the second — one of several and, probably, not the main one. In its pure form the rental income from the real estate exists in these cases when the object of the real estate possessing necessary consumer properties, is leased. In this case from the economic point of view the real estate role is similar to the capital given in the loan; it is possible to tell, that the object of the real estate represents the «naturalized» capital, that is the capital in the material form bringing in to the proprietor of the real estate the cash return (a flow of regular rent payments). Speaking the language of the American economist, Irvin Fisher, capital — stock, well-being for the certain moment of time. The cost equivalent of the real estate will be a capitalised rent with following parities:

$$r(\Delta x) = RK$$

$$K = \Delta x/R,$$

where  $r(\Delta x)$  - rental income of the proprietor of the real estate;

R - level of return on capital (as a rule, in %);

K - capital value.

These parities are universal for objects of the real estate of any functional purpose bringing in return. Differences will consist in size of the income, which, in turn, derivative of the level of solvent demand. Nowadays nonresidential buildings and premises for office purpose are much in demand that defines higher level of the rent for the given kind of the real estate. There is one more factor that influences the



rent size at commercial use of the real estate: profitability of activity of the tenant himself. In an identical office there can be situated both a highly profitable company and a firm that is far distant from it by the level of income. However in practice a rental payment almost always correlates with the income level of the tenant, i.e.:

$$AP = AP + \Delta AP [= f(\Delta x_{ap})],$$

where AP - rental payment rate;

AP - weight-average market rate of AP for the given kind of the real estate;

$\Delta AP$  - AP surplus (overrent, extra rent). Certainly, the exact idea about the size of the income of the tenant (especially under the conditions of the Republic of Kazakhstan one can get far from always. Therefore in some cases they use other mechanisms of formation of AP well considering all essential features of use of rented real property.

So, for example, in Japan and some European countries the size of the rent for places of business and storage rooms is defined as follows:

$$AP = AO + \% V_{06},$$

where AO - size of depreciation charges;

$V_{06}$  - turnover volume in value terms ( $\% = 2 + 3$ ).

Such algorithm is quite substantiated economically. Any real estate in the course of use depreciates and is subject to reproduction. This part of obligatory expenses of the proprietor is compensated by the tenant in the form of depreciation charges. The second part of AP ( $\% V_{06}$ ) reflects the intensity of a commercial circulation which purposes the real estate is rented for. If this intensity is different, it means, the real estate is used with a different «coefficient of efficiency». A higher return for the tenant naturally should correspond to a higher return for the lessor (the proprietor of the real estate). Something similar long since existed in Russia at rent of the land on the terms of the natural rent (for example, «tithe»: each 10th sac of all harvested crop was returned though the crop could be various). The mentioned algorithm has one more essential advantage:  $V_{06}$  is much easier to trace, than the income of the tenant. For example, at rent of a department store, a supermarket the range and volumes of products are stable enough, prices are known and to define  $\Delta x_{ap}$ , for the lessor will not be very difficult.

At rent of the housing real estate the definition of the size of the rent that is the size of AP, is simpler. It represents the function from consumer properties of a rented habitation. There is an interrelation of the following kind:

$$U (U_{06} + U_{loc}) - AP = AP, \text{ where } U - \text{general utility};$$

$U_{06}$  - utility (consumer qualities) of an object (dwelling house, flat);

$U_{loc}$  - the same, of location.

Thus for approximately equal values of AP condition  $U \approx \text{const.}$  is satisfied, i.e. for the same payment it is possible to rent habitation of higher quality with the worse

location or on the contrary. All these factors are considered by subjects of the market, it is that that forms the size of AP. If to accept  $U_{06} \approx \text{const.}$  (habitation with comparable consumer properties), then:

$$+ \Delta U = + \Delta U_{\text{loc}} \rightarrow + \Delta AP,$$

i.e. change of utility of such habitation always represents increase in comparative advantages of location, and  $\Delta AP$  should be considered as the rent regarding location.

Such are main characteristics of the real estate as a source of income. There is a different situation, when the real estate is one of the manufacturing factors (factory buildings, shops, administrative and managerial buildings, etc.). First of all, it is necessary to be clear about, that any of factors of manufacturing is not an income source directly. It is more correctly to consider them as essential conditions, material prerequisite of acquisition of income. The income source is entrepreneurial and labour activity which results are sold in the market as the goods. Sale volume defines the value of entrepreneurial income (profit). The profit - inflow of services in time. If the capital is integration (embodiment) of future services, then the profit is the result of use of these services for a certain time interval. The received profit is the result of an industrial consumption of a certain combination of factors (definite quantity of each of them). Differences in the nature of an industrial consumption are well-known: a part of them, namely basic assets that also include the real estate is used during multitude of production cycles and is not consumed in literal sense, it does not lose its natural and material form in the production process; the other part (circulating assets) is entirely transformed into a finished commodity. The character of consumption defines production cost parameters too, one part of which is depreciation of fixed assets, and the other — overall cost of circulating assets. Respectively it is possible to write down:

$$C \approx H_{\text{ao}} \times C_{\text{of}} + C_{\text{oc}},$$

where  $C$  — total expenses for product release in value terms;

$C_{\text{of}}$  — long term assets;

$C_{\text{oc}}$  — cost of circulating assets;

$H_{\text{ao}}$  — standard of depreciation charges.

Based on  $C \approx H_{\text{ao}} \times C_{\text{of}} + C_{\text{oc}}$ , we can define the sale volume of production in value terms ( $C_{\text{реал}}$ ):

$$C_{\text{реал}} = C + \Delta C$$

The industrial real property is a part of fixed assets. Hence, its cost equivalent  $C_{\text{недв}}$ , one can define in the following way:

$$C_{\text{недв}} = C_{\text{реал}} \times AO_{\text{недв}} / C_{\text{of}} + C_{\text{oc}},$$

where  $AO_{\text{недв}}$  — sum of depreciation charges by objects of the industrial real property.

Note: 1. The results of expressions  $C_{\text{реал}} = C + \Delta C$

$C_{\text{недв}} = C_{\text{реал}} \times AO_{\text{недв}} / C_{\text{оф}} + C_{\text{ос}}$  are defined in yearly calculation.

The overhead charges and other cost elements are not taken into account in this case.

Three important conclusions follow from the above:

First, an economic appraisal of the industrial real estate should be considered as a component of entrepreneurial activity (business) appraisal of an enterprise as a whole.

Secondly, the entrepreneurial income and its constituent provided by the industrial real estate, has different (not rental) basis, unlike the real estate rent.

Thirdly, an industrial real estate, unlike a rented one, is used by a proprietor-entrepreneur himself.

Concluding the real estate consideration as an economic concept, it is necessary to notice, that in practice there can be combined variants of use. For example, living in one's own apartment, (the real estate is used as the economic good), it is possible to be engaged simultaneously in tutoring or other kind of activity (use of the real estate as the manufacturing factor). When the real estate part is leased, this part is used as an income source. Similar situations lead to the necessity to make more detailed appraisal, to work out corresponding methods. The final result of the made analysis should be definition of an economic concept of the real estate. Let's formulate it, considering processes of creation, development and management of the real estate in interrelation: The real estate as an economic category is the material asset which cost equivalent is defined by efficiency of its use as the economic good, commodity or an income source.

## TOPIC 2. THE REAL ESTATE MARKET AS THE PART OF THE INVESTMENT ONE

In the general view the real estate market can be defined as system of economic and legal relations arising on the basis of interaction of commodity and monetary circulation. The markets of finances and the real estate are closely connected with each other. On the one hand, the real estate is the most reliable and effective object of the investment, on the other, - purchase and sale of the real estate this is not simply usual purchase and sale of a durable goods, but also capital movement, i.e. the cost bringing in return, or «the real estate is not the commodity, but the capital in the proprietary form». At the same time the relation of the real estate market with the financial one does not mean that the real estate is a segment of the financial market. The real estate forms its own market. Operations in the real estate market always have the investment content since are carried out for the purpose of acquisition of income or capital values. Investments into the real estate usually give in a higher return, than granting of means on credit. Therefore in many countries of the world purchase of houses and other objects are financed mostly by loan proceeds. Profitability of investment into the real estate is composed of two or three parts depending on certain conditions:

- increment of market value of the real estate in time and realisation at sale;
  - current income in the form of a rental payment, rent interests and other earnings while using an object;
  - income from reinvestment of received current gains (if there are any):
- Investments in the real estate have the following basic peculiarities:
- long term of investments and a long period of capital turnover;
  - low liquidity - sale and purchase of an object takes a lot of time and means;
  - need in comparatively large size of the initial capital;
  - necessity of the proof of the rights to the acquired object by the state registration of transactions;
  - requirement for professional management of the real estate and considerable expenses on its service;
  - relatively higher reliability and efficiency of investments provided with the object of investment itself;
  - diversity of sources of finance, investment.

Capital investments in the real estate are investments in solid assets: in development of land lots, mining operations, exploitation of forest resources, building and work construction of different functional purpose. They are realized in the entrepreneurial form — as direct and portfolio investment. Direct investments mean

capital investments directly in under construction, reconstructed and expanded enterprises, buildings, constructions, water and other objects. Portfolio investment is acquisition of a share, a bond, stakes, shares of enterprises from other participants of investment process, i.e. investment not in the real estate proper, but in the securities issued on a security of it.

## **2.1 The main real estate market elements. System of the real estate market as sphere of investments**

The real estate market is means of reparable, redistribution of buildings, constructions and other property between proprietors and users by economic methods, on the basis of a competitive supply and demand.

It is provided with the help of «invisible hand» mechanism and the government regulation:

- transfer of rights to the real property from one person to another;
- fixing of equilibrium prices for objects of the real estate in regions and grounds;
- communication between proprietors and buyers on the basis of economic motivation and interests;
- space distribution between competing variants of use of the land and subjects of the market.

The basis of the real estate market is made by existing land lots and recreated, reconstructed and expanded enterprises, buildings and works of a various purpose, and also by money or a financial capital.

Elements of the market of the real estate: demand, supply, price, management, marketing, procedures, infrastructure, personnel, licensed subjects, investments, transactions, taxes, standards, laws, analysis, forecasting, segmentation, objects and shares, monitoring, pricing, off-board (tender, estimation, auction, competition, consulting, legal, of real estate agent, advertising, information, insurance, methodical).

Demand is a quantity of land lots, property complexes and the rights to them, which buyers are ready to get by emerging prices for a certain time interval. Other things being equal the real estate demand changes in inverse proportion to the price. Whereas the demand for immovable objects, for example for land lots, under the influence of numerous factors - economic, social, demographic, natural and climatic etc. is formed.

The supply - quantity of the land and other real property ( $m^2$ ,  $m^3$ , hundred square metres, ha, flats and so on), that proprietors are ready to sell at definite prices

for some time interval. The supply of immovable objects, especially land is inelastic. Though already for several years for each buyer of land lots, apartments or offices in the market there are several sellers, the price for them practically is not decreasing. So, in the residence market in Almaty already for a number of years for 8 sellers there is one buyer, and the prices gradually grow.

The price is a quantity of money paid for the unit of the real estate in concluded transactions.

The cost is the most probable money equivalent of the real estate. It is the highest price which will be brought by site sale in the competitive and open market when the buyer and the seller act reasonably, with competence and the transaction is not influenced by extraneous stimuli (commercial value).

The key element and condition of existence of any market including one of the real estate, - information infrastructure - it should contain reliable information of three kinds:

- about existing norms and rules of operation in the real estate market and their expected changes;
- about the structure of demand and supply regarding various objects;
- about the level and dynamics of the prices for objects of the real estate as for districts, micro districts and other segments of the market.

The basic sources of database formation are:

- Republican laws and standard regulations, executive orders of the RK, regulations of authorities of subjects of the RK;
- offers of perspective sellers and buyers, tenants, users and owners, wishing to make an exchange or mortgage;
- advertisements in newspapers, magazines and other publications;
- special researches, surveys.

In practice they apply the information systems formed by each company for its own use, and regional corporate databases.

As the real estate includes various combinations of the legal rights and interests then in some cases the rent can enter the market, in others - mortgage obligations, in the third ones - object of the complete property, free from any requirements. Multifunctional purpose of the land even more complicates the real estate market.

Unlike other kinds the real estate market has, except specificity of the goods circulating on it, there are still more common peculiarities which are necessary to consider at operation fulfillment on it:

- market localisation as its commodities are fixed, unique, and their value depends on an external environment to a considerable degree;

- open information about the state of the market is sometimes incomplete and not always reliable as the real estate transactions are often of exclusive and confidential nature;
- possession of the real estate and transactions with it usually presuppose four kinds of expenses:
  - a) simultaneous rather large investments;
  - b) to support an object in a functional state (repair, operational costs);
  - c) real estate tax;
  - d) state due and other transaction charges;
- demand is determined not only and not so much by consumer qualities of objects proper, but basically by their location;
- low supply elasticity as for a number of reasons it is impossible to construct at once many new apartments, buildings and constructions are durable, and the land - eternal;
- goods - objects of the real estate can be burdened with the rights of the third parties (servitude, etc.) in various combinations;
- rather high degree of government regulation of the market by legislative regulations and zoning of territories;
- goods of the real estate market act not only the means of satisfaction of own needs of buyers, but also as an object of their investment activity;
- relatively smaller number of market participants and quantity of made transactions in it;
- higher variability of demand regarding regions, districts and micro districts.

## **2.2 Functions and subjects of the real estate market**

The real estate market has a large influence on all aspects of life and activity of people, while performing a number of general and special functions. One of the main functions of the market - fixing of equilibrium prices at which solvent demand corresponds to volume of supply. At the prices below the equilibrium one there is a redundant demand, and in case of excess of the equilibrium price — over abundant supply. The price accumulates a large volume of information on the market saturation, preferences of buyers, expenses for construction, economic and social policy of the state in the area, for example of housing construction etc.

Functions:

- commercial,
- information,
- sanifying,

- price forming,
- promotional,
- mediatory,
- regulating,
- investment,
- redistribution of lands and other objects,
- social.

A regulating function consists in that that the market, independently functioning, by definition of A. Smith, by its «invisible hand» redistributes resources by spheres of entrepreneurship and directs its participants - to formation of an effective structure of economy and satisfaction of public interests. In the modern world defects of market regulation are more and more compensated by the public administration of national economy, especially regarding protection of nature, competition, by redistribution of incomes, creation of the legal environment of business, solution of social problems, etc.

A commercial function consists in realisation of cost and consumer cost of the real estate and reception of return on investment.

A sanifying function is clearing of economy from noncompetitive and weak market participants, bankruptcy of inefficient ones. The market mechanism shows to people directions of search, but does not give them any guarantees concerning final financial results. He recognises only socially wanted investments into the real estate, after all only they are paid by the buyer. Therefore clearing the market of inefficient proprietors of enterprises and other objects of the real estate leads to the increase of stability and an economic growth.

An information function is a unique market way of operative gathering and distribution of aggregate objective information, allowing sellers and buyers of the real estate freely with competence to make decision in their own interests.

A mediatory function are expressed in that that the market acts as a total intermediary and a place of a meeting of many independent and economically isolated as a result of a public division of labour buyers and sellers, establish connection between them and gives possibility of an alternative choice of partners. In the real estate market there are professional intermediaries too - real estate agents, appraisers, agents, brokers, insurers, mortgage creditors and other persons rendering services to interested participants.

A promotional function, finally, acts in the form of economic encouragement with profit a productive use of achievements of scientific and technical advance in creation and use of the real estate. The competition economically forces and supports



high business activity and search of new possibilities of efficient control by the capital property.

An investment function - the real estate market is an attractive way of preservation and increase in cost of the capital. It promotes transfer of savings and accumulation of the population from the passive form of stocks in the real productive capital, bringing in the return to the owner of real estate. At the same time the real estate proper acts some kind of indemnity insurance of investment risks. A social function manifests itself in growth of labour activity of the whole population, an increase of intensity of labour of the citizens, aspiring to become proprietors of flats, parcels of land and other capital and prestigious objects. Proprietors of the real estate, in general, make up the middle social stratum of a society. As a result of numerous redistribution in the market of enterprises, land lots, buildings and works, finally, pass to effective strategic investors providing their high-production use.

### **Subjects of the real estate market.**

Participants of subject-object relations in the real estate sphere are the Republic of Kazakhstan, subjects of the RK, municipal formations, legal and physical persons of both the RK and the foreign states, entering economic relations in the course of possession, use and disposal of the real estate.

Subjects:

- Buyers
- Legal persons of the RK
- Physical persons of the RK
- Dealers

Kazakh guild of real estate agents and other noncommercial organizations

Authorized persons

- Insurance companies
- The real estate exchange
- Advertising agencies
- Investors
- Foreign states and persons
- Professional participants Agency of appraisers
- Entrepreneurs and firms - real estate agents
- Legal firms
- Sellers
- Property fund
- Property owners including foreign ones
- State structures
- Notarial offices

- Establishments of the Ministry of Justice of the RK
- Trustee in bankruptcy
- Arbitration court
- The real estate centers
- Bodies of the subjects of the RK
- Bodies authorized by the local government
- Tax inspectorates
- Tax bureaus
- Property management committees
- Bodies of State Land Policy Committee
- Nonprofit housing committees
- State Committee on Construction, Architecture and Housing policy
- Enterprises of all forms of property
- Households
- Mortgage banks

Participants of the real estate market:

- Auction companies
- Bankruptcy committees
- Committee on enterprise privatization
- Tender committees
- Hired employees
- Stock exchanges
- City governments

The state structures and the organisations in the real estate market perform regulating functions which can be expressed in various forms, including:

- legislative determination of rules and restrictions;
- record and registration of the rights to the real estate and transactions with it;
- distribution of natural resources, state buildings and works and then they are granted, rented or used:
  - control on the real property use (of lands, woods, waters etc.);
  - stimulation of privatisation and nationalization of enterprises and other objects;
  - investment in the vital spheres (for example, in the construction of housing, roads, in power system) etc.

Depending on peculiarities of the kind of the real estate the functions of the state, subjects of the RK and city governments are differentiated. Thus, regarding the area of forest relations the Republic of Kazakhstan's competence covers:

- definition of the basic directions of a state policy in the field of forestry;

- development and improvement of forest legislation (with account of subjects of the RK);
- disposal of country forest resources along with subjects of the RK;
- definition of the order of organisation and activity of the state structures of forestry management;
- definition of the order of rating of forest resources as belonging to the groups of woods and to protection categories, and also transfer from one group of woods or a category to another one;
- establishment of norms and rules of practice of forest resources use;
- confirmation in coordination with subjects of the RK the annual norm of logging (prescribed cut);
- establishment of payments system for forest resources use, and also formation and use of the state off-budget fund of reproduction, conservation and protection of forests;
- definition of order and conditions of transfer of sites of forest resources on lease; - the statement of rules of issue of standing wood, of tree felling, reproduction, conservation and protection of wood;
- organisation and coordination of scientific works on forestry management;
- working out, together with subjects of the RK, of government programs on a rational use of forest resources, efficiency increase, reproduction, conservation and protection of woods in a complex with other nature-conservative measures and the organisation of their carrying out;
- realisation of the state control over condition, use, reproduction, conservation and protection of forests and establishment of the order of its carrying out;
- organisation of the state record keeping of forest resources, cadastre, wood monitoring and forest management;
- international cooperation on forestry;
- establishment of the statistical reporting in the area of forestry conducting;
- definition, along with subjects of the RK, of volumes of logging and procurement of wood for state needs;
- making decisions about suspension, restriction, halt of activity of enterprises, establishments and organisations at infringement of forest and other legislation by them.

Bowels, forest and water resources are under the authority of the Republic of Kazakhstan and its subjects.

In regions powers on management of the real estate market are divided among various agencies of the state and municipal executive power: The real estate centers, bodies of State land committee, municipal property establishments.

State Property Management committees.

Functioning of the real estate market is ensured by its professional participants too: real estate agents, developers, appraisers, dealers, exchange brokers, brokers and other intermediaries.

A real estate agent is a person who is engaged in an entrepreneurial activity in the real estate market, carrying out various transactions with the real estate and the rights to it. The activity of a real estate agent is considered an activity which is carried out by legal persons and individual entrepreneurs on the basis of the agreement with interested persons (or by warrant) on conclusion either in the name of and on his behalf or in one's own name but at the expense and in the interests of an interested person of civil law transactions with land lots, buildings, works, structures, resident and nonresidential premises and the rights to them.

In the list of kinds of real estate agents' activity, subject to licensing, following operations are included:

- sale of both housing and nonresidential premises by auctions and on a competitive basis;

- activity at fulfillment of transactions of purchase and sale, feoffment, exchange, barter of housing and nonresidential premises (including intermediary too), on exchanges of a communal flat for several so that each family may have one of its own, moving out of inhabitants of houses that are subject to reconstruction;

- activity (including intermediary) on lease of both inhabited and uninhabited premises which are in ownership of legal as well as physical persons;

- conclusion of sales contracts of housing premises with permanent alimony;

- activity (including intermediary) on lease of land lots that are in ownership of legal as well as physical persons;

Real estate agents can be physical and commercial legal persons in the form of economic associations, production cooperatives and government enterprises.

Depending on a position in the market of the real estate all its participants can be combined in three groups for convenience:

- 1) sellers - proprietors of immovable objects (citizens, enterprises, a state property committee, foreign persons);

- 2) investors buyers placing their own money, loan proceeds or attracted means in the form of the capital and ensuring their target use;

- 3) infrastructure organisations providing services, they organize the market functioning according to the norms established in the state.

Active participants of the real estate market — investors who can act as depositors, clients, creditors, buyers and they can perform various functions. Subjects of investment activity are physical and legal persons, including the ministries and agencies of the RK, municipal governments, foreign states and international organisations which act as investors, clients, executors of the real estate.

Regarding the status all investors can be subdivided into three groups:

- 1) individual (physical persons),
- 2) institutional (collective),
- 3) professional.

Specialized funds and companies (pension, insurance etc.) The bodies, authorised by the state, invest mostly in objects of branches of material production, community and consumer facilities, cultural and other areas. The government of the RK disposes of a state ownership and budgetary funds for investment in national economy development, including in public health, education, science and ecology.

For last years the government bodies of the RK act in the market of the real estate not so much as investors as sellers of the state and municipal plants, factories, buildings and works.

Any investor has the right to:

- define volumes, directions (segments of the real estate market) and efficiency of investments by himself;
- involve on a contract basis physical and legal persons for realisation of investments;
- delegate own responsibility for investment activity to citizens, the state and municipal authorities, legal persons;
- control the purpose of investments;
- possess, use and dispose of objects and results of investments.

The state guarantees stability of the rights of investors: statutes of recently passed legislative acts limiting investment activity, become valid not earlier than in a year since the moment of their publication;

- intervention in the selection of objects of investment is not permitted, except the cases provided by the law;
- non-repayable nationalisation and requisition of enterprises and other real estate is not allowed.

Halt or suspension of investment activity is possible only in cases:

- recognition of the investor as bankrupt;
- natural disasters, calamities;
- introduction of the state of emergency;
- if investment continuation can lead to infringement of ecological, sanitary and hygienic and other norms and interests of citizens, legal persons and the state established by law. Foreign investors can carry out investment in the real estate at the territory of the RK by:
  - shareholding in the enterprises created together with the subjects of business of the RK;
  - acquisition of enterprises;

- creation of the firms completely belonging to foreign persons, and also branches of foreign legal persons; - acquisitions of property complexes, buildings and works;

-acquisition of rights of use of the land and other natural resources, other property rights;

- acquisition of interests in business, shares, stocks and other securities;

- granting loans, credit arrangements, concession of property and proprietary rights.

### 2.3 Kinds of the real estate markets

The real estate market has a branched structure and it can be differentiated by various signs: kind of financial asset, geographic factor, functional purpose and other indicators (Table 1).

Table 1

#### The classification of the real property markets

№	Classification sign	Kinds of the real estate markets.
1.	Kind of object (commodity)	1. Land. 2. Buildings. 3. Constructions. 4. Enterprises. 5. Premises. 6. Perennial plantations. 7. Real rights. 8. Other objects
2.	Geographic (territorial) factor	1. Local. 2. Municipal. 3. Regional. 4. National. 5. Global.
3.	Functional purpose	1. Production buildings. 2. Housing. 3. Nonproduction buildings and premises (offices, warehouses etc.)
4.	Degree of readiness to operation	1. Existing objects (old fund). 2. Incomplete construction. 3. New construction.
5.	Kind of participants	1. Individual sellers and buyers. 2. Intermediate sellers. 3. Municipal formations.

		4. Commercial organizations.
6.	Kind of transactions	1. Purchase and sale. 2. Rent. 3. Mortgage. 4. Real rights (rent, pledge etc.)
7.	Branch belonging	1. Industrial objects. 2. Agricultural objects. 3. Public buildings. 4. Others.
8.	Form of property	1. Government and municipal objects. 2. Private.
9.	Way of transaction settlement	1. Primary and secondary. 2. Organized and unorganized. 3. Stock-exchange and off-exchange. 4. Conventional and computer-aided.

The primary market in Kazakhstan is being formed by privatisation of the state and municipal enterprises, parcels of land, buildings and premises and the real rights. It provides the transfer of the real estate to the economic turnover. All subsequent transactions are of secondary nature as are connected with resale or with other forms of transition of the objects, entering the market, from one owner to another one.

The organised market is economic circulation of the real estate and the rights to it in strict conformity with the current legislation with participation of the licensed professional intermediaries. This market guarantees legal cleanliness of transactions and protection of the rights of their participants. The unorganized (street) market does not always provide reliability of operations being made.

The commodity exchange market is purchase and sale of objects at the real estate stock exchange, at competitions and auctions organized by committees of the state and municipal property, land authorities, committees of municipal housing or special authorized organisations.

The off-exchange market is conclusion of transactions outside of the stock exchange. It can be organised and unorganized. The organized off-exchange market is based mostly on computer communication systems of licenced real estate agents' agencies.

By the key sign — kind of objects of the real estate — one distinguishes no less than 8 specific markets among which the most developed markets of land lots, inhabited and uninhabited premises are of general importance. As the land is included as a necessary component practically into any object of the real estate, we will consider a little more in detail the structure of the land lots market, its segmentation and key parametres.

The parcel of land as a complex independent kind of the market is used to divide into rather homogeneous subspecies or varieties according to purpose of lands that then are differentiated by a number of other signs (size, location, etc.). The following component of the land market - a market segment — in a special way separated part of its given kind, a group of elements having certain mutual signs (quality of lands, distance from industrial centres, etc.)

The most profitable market segment is characterized by:

- high level of current or anticipated sales;
- high increment rates of sale of parcels;

- fast turnover of means and acceptable rate of return. Market segmentation is one of the major tools of marketing. The success in a competitive struggle depends to a large extent on correctness of a market segment selection.

There is a great many criteria and signs according to which it is possible to make the land market segmentation.

Objects of segmentation are buyers, commodity proper — land and market participants.

commercial organizations and entrepreneurs.

The segmentation sign is a factor by which separation of market segments is carried out.

Depending on the purposes of segmentation as signs the factors characterising purchasing behaviour of physical and legal persons, parameters of land lots, economic indicators of the commercial organisations can be used. Nowadays real estate agents' firms use multiple segmentation, i.e. segmentation according to several signs simultaneously (multifactor model of segmentation).

Market segmentation by a category of buyers is made mainly according to four signs: demographic, psychographic, geographic and behavioural. Each of these signs is used at the market analysis not by itself, but in a certain combination with others, to define more precisely, whose and what needs are satisfied with one or another type of land lots.

Demographic signs: age, sex, size of the family, stage of family life cycle, level of incomes, occupation, educations, religious convictions, race, nationality

Psychographic signs: social stratum, way of life, personality type, activity category, traditions, experience.

Land lots market.

Geographic signs: region, district administrative division (by size), population size (for cities), population density, climate. Behavioural signs: status of buyers, required benefits, user status, consumption intensity, adherence degree, degree of readiness for perception of a site, attitude to the land, weight of clients (big, small, average).



The criterion of segmentation is a factor according to which validity of choice of one or another segment of the market is estimated. Following criteria are the most widespread: quantitative parameters of a segment, importance, profitability, compatibility of a segment with the market of the main competitors, efficiency of work at the chosen segment, protectability of the chosen segment from competitors.

Market segmentation by the product — by the land - allows revealing, which parameters of one or another site may be attractive to buyers. In so doing, they use such characteristics of lands, as their quality, remoteness from industrial centres, size of sites, investment appeal, prestigiousness, etc.

The following sign of segmentation - the sizes of areas. Large sites usually are in demand and accordingly are appreciated more highly only in prestigious districts. Whereas in the general case the price of a land unit in large tracts of land is considerably lower, than of small sites. Thus the cost of hundred square metres in small and large sites may be considerably different depending on a number of factors.

The degree of infrastructure development influences the cost very much. Sites on well cultivated land allotments are valued much more, than on undeveloped. The difference between the prices of the cultivated and undeveloped sites at the equal sizes will be approximately equal to total size of expenses for infrastructure development and costs for capital management («time costs» of site development).

The increase of the land lot cost depending on presence of communication in percents:

Transport ways -10-15,

Electric power 15-20,

Water supply -10-15,

Gas supply -15-25,

Sewerage 10-15,

Heat supply -10-15,

Communication -3-5.

The important role is played by market niche selection too, i.e. its small part being unoccupied or used insufficiently by competitors and clearly outlined circle of customers.

One distinguishes following segments of the real estate: housing market, the market of the commercial real estate, the market of the land lots.

Housing market.

Free housing privatisation for a short term has created a wide stratum of proprietors - owners of flats and rooms from a municipal and departmental residential stock.

Earlier existed distributive housing system has led to the low differentiation of population groups and social strata by housing supply.

At the same time transition to market relations has led to reduction of housing construction at the expense of the state budget which was earlier the main source of capital investments in housing construction.

The basic group of the buyers forming at present demand for housing, make up 4-6 percent of the population which consists of the families with high incomes. Hence, as soon as the economy sustainable development will begin, the welfare of Kazakhstan citizens will start to increase too; the demand of the population for housing will accelerate as well.

The housing market is in turn subdivided into the market of urban housing and the market of country housing.

1) The urban housing stock is divided into several groups considering character of development: poor quality housing, standard housing, development of Stalin times, houses of the improved layout, elite housing. Thus quality of housing and its location are key parametres influencing the demand in the housing market and accounted in the prices for housing.

2) The organisation of the market of country housing is connected with removal of restrictions for individual country construction. Despite a difficult economic situation in the country the growth of rather prosperous stratum of the population made more active the demand for country houses, cottages. Demand for country housing depends on location (the preference is given to the nearest suburb, for example in mountains, to presence of modern facilities (electricity, gas, sewerage, running water, and telephone), affinity of vacation spots (mountains, reservoirs, forest), personal protection and safety of property. As experts note: «Absence of the sufficient supply in the market of country houses sharply distinguishes it from the market of urban housing, and it is at times leads to misinformation of the seller concerning the real price level». The main constituents in the market of country housing: new construction (development), old development, incomplete construction. Surge in business activity of Kazakhstanis in this market is influenced by a season (autumn - market attenuation, spring-summer - the growth period).

The market of nonresidential premises or commercial property market.

It is formed in connection with privatisation of the enterprises, it is much smaller, than the housing market, quantity of operations being made is insignificant, but because of high cost of objects is attractive to the structures working in this market.

In the market of the commercial real estate prevail the rent transaction, instead of purchase and sale or barter, as in the housing market. The market has big prospects and reserves for the development, especially in large cities, but develops slowly. The size of the rent rate depends on type and locus of a premise, presence of a private

entrance, guards, parking lots, quantity of telephone lines, affinity to the basic city mains, and convenience of an approach.

This market is subdivided into several segments which are differentiated by the functional purpose: for office, trade, warehouse and industrial ones.

1) In the market of offices in Kazakhstan three basic sectors have been formed:

- prestigious offices appropriate to the world standards for administrative premises. The rent rate in such premises is very high. For this reason some Kazakhstan businessmen rent the first class offices abroad at more reasonable prices.

- the second group is formed by the offices which are in well decorated and equipped premises, and sometimes also in the settled and qualitatively repaired apartments of the large size.

Rent rates here are acceptable to successfully working firms; at this sector an active demand which constantly grows is observed.

- the third group is made up by premises in buildings of departmental uninhabited stock, the state enterprises (mostly scientific institutions), cooperative and private enterprises. These are premises without decoration work and repair and associated services. Rent rates are not high here.

The market of office premises has good prospect for its development as freedom of conducting entrepreneurial activity causes creation all the new enterprise structures requiring premises for their functioning.

2) The market of trading spaces. The key factor of successful activity of trade enterprises is the beneficial locus, it is it that defines the turnover volume. The trade premises located near the main traffic centres, stations of various kinds of communication are in the highest demand. The prevailing form of transactions in the market of trading premises in the downtown is purchase and sale of trade premises, outside of the downtown - the rent of premises. The rent rates in the downtown and at the suburb are different several times as many. Many buyers at first rent a trade enterprise to check up, will or will not the trade go in the given place, and then buy it. The practice when they rent the land site where trade from vehicles or from containers is carried out becomes more widespread.

3) Dynamically developing segment of the market of the real estate is the market of storage rooms. It is characterized by stability, steadiness of supply and demand, prices. In the market they offer specialised warehouses equipped with cargo handling machinery that are heated, there are reliable security, hangars, basements and semibasements in administrative buildings etc. Customs warehouse are distinct in a special way.

At present following basic forms of provision of storage rooms are used: rent, responsible storage of the cargo, responsible storage with insurance.

The rent payment rates in the market of storage rooms are differentiated depending on the degree of well-appointedness of a warehouse, its locus, remoteness from traffic centres. The supply in the warehouse market tends to grow. Expenses for warehousing is considerably lower than expenses for housing, office premises. The increase of need for warehouse objects in process of increasing number of managing subjects will show a guaranteed demand for storage facilities.

4) The industrial property market. For newly formed industrial structures, for a reshaping of already existed ones production spaces are required. The most part of producton spaces is offered as a long-term rent. Requirements to industrial premises depend on specificity and production methods, requirements to fire and ecological safety. Because of an insignificant economic growth the sale of enterprises as property complexes has not become widespread. Because of imperfection of methodical base and social nature concerns the procedure of bankruptcy has not become widespread yet. Business quarters show the largest interest in the industrial real estate located in regions, because of considerable cheapness. The prospect of this market depends on prospect of development of national economy.

5) The market of land lots. In many countries the land is one of the basic values circulating in the market of the real estate. In Kazakhstan the market of land lots just begins to be formed. There are operations with lawn and garden plots, dacha lots, a small number of operations with the lands of the redeemed enterprises.

Purchase and sale and descent are the most widespread transactions with the land lots.

Demand and the price of plots being sold depends on plot purpose (for housing development, for gardening, for a farm), remoteness from a city, prestigiousness of the locality, presence of nearby reservoirs, forest.

Formation of the land market, establishment of market prices for the land lots occurred, however, by insufficient rates, what was explained by imperfection of legal base and current mechanism of land relations. Now, when in the Republic two basic laws about the land relations have been passed, on January 26, 2001 of No. 152 - II Law of the Republic of Kazakhstan «About land» and from June 28, 2003 of No. 442-II the Republic of Kazakhstan Law «Land code of the Republic of Kazakhstan» they expect dramatic land market movement, as the Land code provides for the sale of agricultural lands.

### **TOPIC 3. BASIC PRINCIPLES OF THE REAL ESTATE MANAGEMENT**

Management of the real property as a special kind of enterprise activity can mean depending on a situation: making decisions and preparation concerning proprietary rights to the property subjects; management of the certain kind of object in the course of its operation for satisfaction of personal needs or commercial use; any single purposeful organizing influence on the real estate for achievement of the set goals; process of realisation of functions of management for reception of certain social and economic results; system of legislative and executive regulation and control of behaviour of all participants of relations of the real estate, carried out by the bodies authorised by the state with the aim of stabilisation and effective development of economy under changing conditions which is called regulation.

Principles of management of the real estate market in many respects depend on political and economic conditions in the country, but simultaneously they should account existing world experience. Achievement of the formulated purposes is possible at the account of following principles of management.

1. Division of procedures: application of special approaches to regulation of relations of various kinds of the real estate - inhabited and uninhabited premises, land, forest plots and other objects.

2. Openness of the information on all participants and objects of the real property market for making business decisions.

3. Rule-making publicity - public discussion of drafts of law and other normative acts. For example, discussion of the program of the housing reform touching upon the interests of all strata of population.

4. Competition as the mechanism of improvement of quality of services in the market and decrease in their cost.

5. Division of powers between regulating authorities rule-making and rule application should not be combined in the same person.

6. The real estate objects of both state and municipal property are in the general common possession and used by the whole population of corresponding region.

7. Simplicity and comprehensibility of rules and procedures established by legislative acts regarding the real estate, reliability of protection of proprietors of bona fide purchasers from any arbitrariness.

8. Taking additional measures of protection in the market of housing premises of citizens from risk group - minors, single pensioners, disabled persons etc.

9. Rational distribution of functions of management by the real estate market between the state bodies and professional participants - commercial and public organisations (associations of real estate agents, of appraisers, etc.).

10. The policy in the field of the real estate management should ensure an effective land use according to the confirmed schemes of zoning of territory and exclusive selective and grounded tax exemption with a gradual transition from exemption regarding land payments to selective reimbursements from the budget according to the adopted social policy.

11. Government representative bodies (federal, territorial and municipal) in interests of the population pass the laws and other normative legal acts establishing an order of possession, use and disposal of the real estate objects.

12. The disposal over the state property according to the current legislation is made by government executive power bodies.

13. Privatisation of the state and municipal real estate and compensated transfer of rights to private objects should be made at market cost, instead of inventory one.

14. The dues and tax payments collected from the real estate objects including the transactions with them are divided by management levels according to the established norms.

15. Observance of continuity of the Russian control system of the real property market having its own history and traditions, taking into account world experience of regulation of the property rights to various real estate objects; its creative interpretation and adaptation to our domestic conditions.

The basis of the modern system are innovative and international processes.

The modern approach integrates and expands classical and neoclassical ideas, considering the organisation as «unified functioning organism» for the whole stage of its life cycle.

Considering the organisation as a system which should be the steady, flexible organizational structure focused on stimulation (of individuality and creative potential of the managerial personnel and employees, it is possible to distinguish basic principles of the modern management theory:

- changes, made to any constituents of the system, entail changes in its other components;

- any system after some possible changes caused by internal or external factors, aspires to find a new point of equilibrium;

- system as a whole and each of its elements separately have definite limits of their development which may be as completely open (they react to external influences more responsively), as completely closed (totally isolated from external factors and tend to self-destruction in long-term prospect);

- certain hierarchy which possesses both formal, and informal power structures with complex interactions is inherent in systems.

They used to distinguish following basic organizational structures of management of the system approach school: divisional, program-target, unified construction business.

The focus of attention of divisional organizational structure there are products/markets of separate fields of business (activity directions). Divisions serve as the main elements, hence the name of the structure.

Management of divisions (organizational units) is carried out at full efficiency, independence, possibility to enter contractual relations with each other, to receive profit and to carry out self-financing on the basis of the coordinated long-term objectives and tasks with the top management. Among such problems there are: modernisation and expansion of production capacity, transition to release of new production, transformation of organizational structure of the subject of business. For example, at the IBM Corporation divisional structure is combined with the program and target approach according to which the solution of the problems the corporation faces is assigned to targeted, designed or working divisions specially created for this certain goal.

In due course such groups can be transformed into the so-called internal firms possessing still more independence, than divisions of the main structure. Therefore such organizational structure can be characterised as constantly renewing divisional structure constructed and developing by the program and target principle.

More complicated type of organizational structure of management in modern conditions is unified strategic management in a combination with the controlling system.

Controlling — new phenomenon in the theory and practice of the modern management, emerged at the joint of the economic analysis, planning, management accounts and management. Controlling directs administrative process to achievement of the main cost (monetary) purpose of the enterprise — optimisation of financial result by maximisation of profit and value of the capital at the guaranteed liquidity.

Unified strategic management as a method is synthesis of a combination of the strategic approach to statement of problems and the program and target approach to their realisation.

The strategic approach (or strategic planning) differs from the long-term approach (long-term planning) that it directs the enterprise not to the existing conditions, but to those that still to be formed. In other words, if a long-term planning is based on extrapolation then according to the strategic approach the problem of forecasting (prediction) of changes and the preliminary adaptation to them is set. The strategic planning as the principle of setting of problems has appeared in the 60s when the increased instability and dynamism of an environment already were beginning to have their effect. But attempt to introduce it without a way of realisation

of problems adequate to it has met imperception of employees of the large companies. It is this problem that has been solved by the unified strategic planning.

The so-called strategic economic centres which are responsible for achievement of certain strategic targets in «strategic zones of management» become the main structural links of a large company. And as the purposes and zones proper undergo constant changes, the structure gets the necessary dynamism. Created reckoning the future, it contradicts the present that turns it from the deterrent into the powerful tool of acceleration of development of a company. The mechanism of realisation of the strategic approach has been created, but it requires a constant renewal, expansion of independence of employees of all levels etc. Modern approaches to management demand implementation of following ten «advanced principles»:

- strong belief in individualism (respect for personality);
- there is no isolated scheme of behaviour, any action causes a chain of behavioural reactions;
- the same status of all employees;
- engagement of top class experts;
- permanent training of employees, especially, top managers;
- delegation of the maximum responsibility to the lowest levels of management;
- some restrictions of the activity of line managers;
- encouragement of disagreements (the «about wild ducks» parable);
- development of horizontal connections;
- personal stimulation of employees.

From the point of view of the system approach for the high-tech organisations, including the management of urban municipal real estate, demanding deep specialisation of management, the complex or matrix structure is the most effective. It means that the traditional line and staff hierarchy is used to perform some functions, and for the solution of special problems involvement of experts of other structural divisions is required. All parts of system are in a close interrelation.



## **TOPIC 4. THE BASIC POINTS REGARDING THE REAL PROPERTY MANAGEMENT**

The real estate management, as well as in any other area of entrepreneurial activity, is impossible without precisely formulated purposes which serve:

- initial moment of any managerial actions;
- basis of construction of estimation criteria of enterprise activity results;
- basis of the analysis of problems - discrepancy of the desirable and achieved state and working out of new solutions.

In the general view the purpose is a future desirable state or set of results reached by the person both in process and after completion of the directed actions. The purpose appears on the basis of motives and acts in the form of needs which satisfaction any work is directed to.

Motive - the internal mental condition inducing a person to activity, allowing satisfying various needs - material, spiritual, in the course of work and results of work, self-expression and the social importance. The content of any motive implies its structure, including:

- needs that a person wants to satisfy;
- good allowing satisfying corresponding needs;
- labour actions necessary to receive benefits;
- price or material costs and moral expenses for labour activity realization.

The goal performs following main functions:

- initiative - comparison of the existing and the wished state, causing aspiration to actions;
- management tool - the guiding requirement, master (imperative) of actions;
- criterion of making decisions - data evaluation and selection of alternatives;
- coordination - realisation of frictionless relations of all persons making decisions according to the established purposes;
- control - provision of an objective feedback in a control system by the end results.

Immovable objects are purchased for satisfaction of personal or public needs or for enterprise activity. Accordingly the purposes of the real property management are of two kinds: financial and economic and non-cost (friendly, public, charitable etc.).

### **4.1 Forms of government regulation of the real property market**

In the real estate market the state performs following functions:

- ideological and legislative initiative (development concepts of individual kinds of the market and the program of their realisation);
- of the investor in priority branches of material production, housing construction and sociocultural sphere;
- of the professional participant at trade of housing certificates, state buildings and constructions and other real property objects;
- of the issuer of the government and municipal securities against a pledge of the real property;
- of the regulator establishing rules and norms of functioning of the real estate market;
- of the supreme arbitrator in disputes among participants of the real estate market via the system of judicial bodies;
- of the controller of stability and safety of the market (registration of the rights and transactions with the real property).

The system of government regulation of the real property market consists of two components:

- a) state and municipal authorities and organisations
- b) state and other normative acts.

Concerning an organization the state regulation of the real estate property is carried out in two forms:

- by direct interference, i.e. by the administrative way;
- by the indirect effect or economic methods of management.

The direct management control includes the set of following ways:

- creation of normative base — laws, decrees, instructions, rules, statutes regulating functioning of the real estate market in the centre and in regions;
- selection and attestation of the status of professional participants of the real property market — licensing, registration, granting of the rights of the authorised persons by executive authorities on fulfillment of transactions with objects of the state and municipal property;
- establishment of obligatory requirements to the content and quality of various kinds of activity in the real property market and to its participants;
- control over observance of the established norms and rules by all market participants;
- introduction of interdictions and sanctions for deviation from normative requirements at fulfillment of transactions with the real property;
- law and order maintenance in the market;
- buyback in a state ownership of any real estate objects for social needs.

Management control is not connected with creation of additional material incentives or penalty provisions. It is based on the strength of the state authority and

includes measures of prohibition, compulsion or permission. For example, in Kazakhstan they have imposed restrictions on conducting of town-planning activity in zones of protection of monuments of history and culture, in sanitary, protected, water protection zones, at territories of bedding of mineral resources, at settlements with a special regulation. Economic methods of the real property market management are carried out with the help:

- a) systems of the taxation of property and benefits (tax rates, exemption from them);
- b) regulation of the rate (discount policy of the central bank);
- c) issue and circulation of housing certificates;
- d) provision to the citizens, being in need of improvement of housing conditions, free subventions for housing construction on a commercial basis;
- e) realisation of government target programs;
- f) depreciation policy;
- g) foreign-economic activity.

The existing control system of the real estate in Kazakhstan needs improvement a number of reasons accounts for it:

- the full register of the state real estate has not been formed; it does not allow making accurate differentiation of the property and to carry out the control of true monetary flows, to make the reliable analysis of efficiency of the real estate use, to make the forecast of earnings at the republican budget;

- there is no system of a market estimation of objects, and also accurate definition of rights of the real estate use, that results (especially in the conditions of inflation) in constant understating of cost of property, reception of less rent payments, generates corruption as the state, being the largest proprietor of the real property, leases property by the rates considerably lower than the market ones;

- the powers of the state as proprietor of the real estate are carried out by the different republican public authorities which activity is often far from mutual coordination;

- the rights of the state to objects of the real estate belonging to it are not registered in the order established by the law that complicates the disposal of them;

- multichoice and the individual approach to real property use is poorly used;

- a great number of objects of incomplete construction is not involved in the turnover, therefore they lose an investment appeal;

- disposal of the state lands is carried out by institutions of local government; the user of the real estate has to conclude two contracts not connected with each other, that contradicts the world practice;

- development of the land legislation lagged behind the development of other branches of legislation regulating the real property turnover that led to mismatch of

modes of legal use of the land lots and the buildings and works situated on them at their objective coherence in the single object of management.

Thus, despite the steady tendency of increase of the incomes received from use of the real estate, these revenues considerably fall behind the developed market indicators that are the basis for change of approaches to the real property management.

## **4.2 Goals and controlling mechanism of the real estate**

The improvement of a control system of the real estate should be directed to achievement of following ends:

- the most possible increase of profitability of the real property objects;
- the most effective performance by the state the social functions in the course of use of the republican real property;
- stimulation of the development of real sector of economy due to the use of the real estate;
- provision of the simplest and the most convenient access of entrepreneurs to the real property objects;
- exclusion of possibility for corruption in management process of the real estate;
- involvement of objects of unfinished construction in the economic circulation.

To achieve the mentioned purposes it is necessary:

- a) to form the full register of the state real estate (balance of the real property), containing quantitative, cost, technical and legal characteristics of objects of the real estate, including objects of the incomplete construction;
- b) to differentiate accurately and co-ordinate powers of all state authorities participating in the process of the real property management;
- c) to form the objects of management, having excluded the possibility of disposal of one part of the object without the other in cases when they make the single unit (parcels of land and buildings and works situated on them);
- d) to establish, in what cases and, on what legal basis the land lots should be provided.

The parcels of land should be sold to the commercial organisations or rented by them, that will raise incomes of the budget from the land use and will stimulate the organisations to optimise the sizes of the land lots occupied by them.

The parcels of land as a constant (perpetual) use should be given only to the organisations financed from the budget, and to citizens to be used for noncommercial purposes;

e) to provide unconditional application of the mechanism of a market estimation at the real property use, to level the rent rates collected for use of the state real property, with the existing rates in the market;

f) to create the necessary legal base, allowing using various ways of the republican property disposal (mortgage, entrusted administration, inclusion of the rights of use in the authorized capital stock);

g) to create conditions for attraction of investments into the real sector of economy by the maximum involvement of the real estate in the civil turnover, including by provision to investors on the most preferential terms the unfinished construction objects;

h) to settle questions of acquisition by the state the real property objects, including to define the purposes which to achieve the acquisition of the mentioned objects is made for;

i) to establish the rigid control over use of the real property assigned as the economic conducting and the operative administration; to define legal possibilities of ejection at the unitary enterprises (for example, in case of the wrongful real property disposal);

j) to reveal and confiscate the property of the state establishments that is excessive, idle or is not used purposefully (considering the necessity of its use only for performance of those functions which an establishment is created for);

k) to use for efficient control of the real estate the mechanism of the reimbursement for management of the real estate (including on inventory and estimation), similar to the civil law as the state at use of the real estate participates in a civil turnover on a par with its other participants; to define the standard, assessments of means to the bodies of management of the real property with their subsequent offset on account of financing from the budget;

l) to change the existing mechanism of sale of the real estate as it allows the acquisition of objects by low prices. The right to real estate acquisition in a similar way belongs to the limited circle of persons according to the legislation on privatisation, it should be preserved, but for the limited term. The sale price should be defined on the basis of the market estimation; m) to establish for all subjects of the RK the common order of making decisions on the use of the republican real estate (first of all concerning leased objects), providing efficiency of decision-making;

n) to provide vocational training of the civil servants managing the republican real property.

The controlling mechanism of the real property objects.

Achievement of the purposes of management of the real estate objects is possible at a concentration of functions of disposal of these objects in the single

agency. The complex object consisting of the land lot (or its share) and all buildings, works (or their parts) connected with it, becomes the main object of management.

The total inventory of the real property objects should become the first step in achievement of the planned purposes. The received information will give the chance to make operatively a market estimation of objects of the real estate on the basis of the account of their basic characteristics and use of methods of statistical processing of the information on market cost characteristics of real objects of the real estate. On the basis of data of the government property register the state should register the rights to the inventorized and estimated objects of the real estate.

Development of unified rules and procedures of making decisions regarding the disposal of the real property objects should become the second step. They should be based on following principles:

- unconditional priority of compensated kind of use; definition of unique cases of granting of the real estate on a gratuitous basis;
- use of the highly remunerative real property for commercial purposes;
- prohibition for granting of objects of the real estate as rent by rates lower the level of the market prices which have developed in the region;
- reduction of benefits while using the real property objects;
- transparency of actions to provide the real property objects to be used with the obligatory publication of the list of objects for all interested persons. If there are two and more applicants the tender is required;
- simplification of registration procedure of the rights of use of the real property objects and reduction of its terms. The tenants paying the rent for use of the object by commercial value and fulfilling all treaty provisions, concluded according to the established order, subtenancy can be permitted with the observance of a notifying order;
- the sale of the incomplete construction objects on investment conditions proceeding from their market value. The objects not having commercial value can be given to investors for free use for investment projects corresponding to the state interests.

Following indicators can testify the achievement of management purposes; firstly, increase in incomes of the budget from the state property use; secondly, approximation of rates for rent of the state property and market rates of a rent. These indicators should be under a constant control. Moreover, it is important to establish the control over timely working out and acceptance of corresponding standard legal base, and also over provision of completeness of the register of the real estate objects.

### 4.3 The real property privatization

Reforms on the Kazakhstan real property market touched first of all the housing sphere. Their embodiment in the Republic has begun more than ten years ago with the emergence of the Law «About privatization and denationalization of the state property of the Republic of Kazakhstan» in which *the first stage* (from 1991) was privatisation of housing by citizens. Thanks to this legalised procedure a large quantity of tenants have turned into proprietors of the real estate, that as a result has led to change of relations of the property not only in the scales of the country, oblasts and municipal formations, but also within each apartment house.

*The second stage* (1993-1995) of privatization was marked by the passage of «National program of denationalization and privatization» that had to take the mistakes of the first stage into account. The program provided the organisation of the national state holding and joint-stock companies which purpose was creation of new system of administrative structures at the average economic link.

At the same stage there was mass privatisation of the enterprises which with application of the coupons granting the right to purchase of actions of investment privatisation funds (IPF), being intermediaries between the state and the population, should have made from all capable citizens of Kazakhstan the new proprietor of the state property.

*The third stage* (1996-1998) of privatisation that concerned individual objects was about the enterprises of the main branches of industry and a part of objects of the social sphere. It is necessary to notice, that this period was notable for inadequacy of information in the press though the industrial giants of the Republic were privatised. However errors of this period have been noted by scandals too, it is transfer to be managed the world- famous combines: «Karmet», Sokolov-Sarbay, Don woodworking combine and the transaction of the Almaty mayor's office with «Traktebel» company regarding the Almaty electric system.

Thus, during the period from 1991 up to 1998 in Kazakhstan the program of privatisation consisting of small, mass and privatisation by individual projects, sector programs has been realised, the legislative base is generated, primary division of the state property into the republican and municipal is made. Within the limits of programs of privatisation till the end of 1993 they have privatised 3276 joint-stock companies and economic associations that makes up 65 % of the total quantity of the created joint-stock companies and the economic associations, it is practically the whole housing fund of the republic transferred for use to the population, 2606 objects of the social sphere (only for 1997-1998).

However the third stage of privatisation too has not led to conclusion this long process of ownership denationalization in Kazakhstan. Therefore to carry out the

program of actions of the Government of the RK for 1998-2000 a new «Program of privatisation and efficiency increase of the state property management for 1999 - 2000» has been passed». It has been related to the fact that privatisation of a number of the organisations and objects has been made not in full conformity with legislation requirements, including without observance of a principle of succession of the buyer (or the seller) as for obligations to creditors.

Because of it the volumes of requirements and claims by legal and physical persons to the Government of the RK, including creditors of the enterprises and establishments privatised as a property complex have increased.

Another problem is connected with completion of the coupon privatisation process. In 1999 the Government should have developed and introduced in the Parliament corresponding bills which would allow completing reorganisation of investment and privatisation funds into open joint-stock companies, consolidating their assets and adjusting a skilfull management. Unfortunately, this problem still has not solved and the state real estate continues to be sold by auctions and tendering.



## TOPIC 5. THE ORGANIZATION OF WORK ON THE REAL PROPERTY MANAGEMENT

### 5.1 The real estate portfolio management

As management of the real estate portfolio is understood the set of processes of formation and development of the administrative solutions providing the highest return (efficiency) from strategy and tactics realized regarding rational use of assets by the proprietor.

In the figure, the real estate portfolio in a general view, including housing market where simultaneously there are developers, investors and users. Let us consider in more details the constituents of the real property portfolio (fig. 5.1).

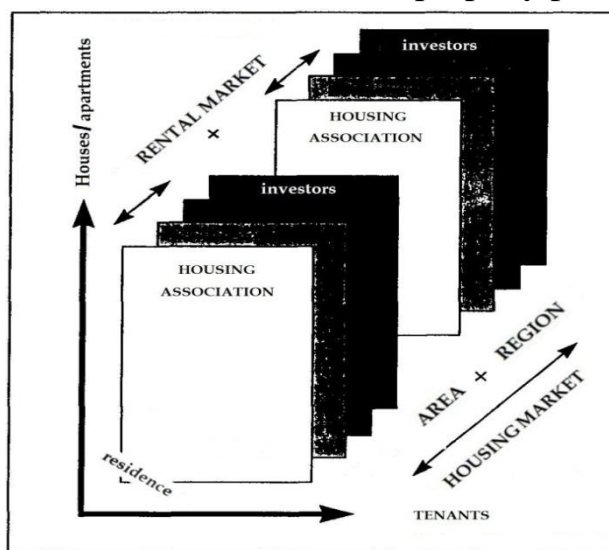


Figure 5.1. The real property portfolio

The real property portfolio manager (or investment portfolio of the real estate manager) is responsible for profitability of the portfolio entrusted to him (in full or in part), consisting of the real estate objects, and also for working out and carrying out of the strategic program of management. On the one hand, this policy is directed on drawing up of an optimum portfolio by making well balanced investments and withdrawal of means taking distribution of possible investment risks into account. On the other hand, it is directed to optimisation of a parity of risk and profitability from the point of view of operation and increase of use value of objects. The portfolio manager at the strategic level sets problems for the manager of funds at the tactical level and makes the final decision on participation in realisation of large desinvestment projects.

Professor Keeris W.G. in his book «Vastgoedbeheer Lexicon» gives the following description of the portfolio manager role:

«The portfolio manager is responsible for return on investment, increase value in use (value) of objects in long-term prospect, portfolio drawing up, positioning of objects in the certain markets and reduction of possible risks by acceptable limits.

Development of the strategic program of portfolio management is made on the basis of results of analyses of the portfolio, and also knowledge of the market, received from the portfolio manager (the real property management).

The portfolio structure is considered optimum with account of dispersal of investment risks and depends on objects entering into it, their type, sizes, geographical location and age. The central aspect of portfolio management is investments and, thus, reception of the maximum return on investments. This profit should be considered in a direct combination with possible investment risks.

Thus, activity of the portfolio manager is directed on management of risks and the control over them.

The portfolio manager is also responsible for the received income on the means invested in a portfolio in long-term prospect and for increase of use value of the objects included in a portfolio.

Along with it, the manager is responsible for degree of investment risks, market share (percent from a total sales volume of the given goods by all market participants) etc. Besides, the task of the portfolio manager is following up of changes in the market and making amendments in these changes, concerning researches and technology as well as regarding introduction of investment mechanisms».

As follows from the aforesaid, the essence of the portfolio management consists in definition of starting points of strategy to which the portfolio structure should correspond to, and in realisation of this strategy. Specifically it means, first of all, definition of those combinations of ready building production and markets that the organisation would like to work with. Thus all possible risks (riskiness) of the given combinations have crucial importance in the optimum portfolio selection. Definition of the portfolio structure is made at various levels, for example, at the level of market sectors (office and trading premises, housing) or of the countries (the USA, Western or Eastern Europe). As the illustration of strategy development process of management of residential premises portfolio one describes the Dutch experience that is most acceptable to Kazakhstan as from a theoretical (the legal base is similar) side as well as from the practical one.

## 5.2 The analysis of existing tools for formation of strategies

To help the real estate managers in the course of their orientation to inquiries of the market the use of some administrative approaches is required. We will dwell on application of the modern models used for decision-making.

1. Boston Consulting Group Matrix «Market share - market growth» matrix (portfolio analysis) (fig.5.2)

The competition in the real estate market forces the owners and the users to define priorities and to react to possible changes. Incomes from operation of some parts of the real property fund should be sufficient to cover investments in other sectors, and first of all those that are in a growing demand and require expansion. In the portfolio of any managing organisation there are objects that are in the final stage of their life cycle. Regarding the objects not bringing in any profit, they use a special approach, individually to each of them (reconstruction, destruction etc.).

The portfolio of the organisation in the field of the real estate consists in all of various types of objects together with the every possible purposes and problems which they are connected with. The combining of various and widely differentiated purposes in real estate economy is an extremely complex task. The given situation demands the working out of the system of planning and management of a portfolio. The portfolio analysis is one of the most often applied tools of strategic planning for today.

The strategic planning is something more than marketing planning. It also includes distribution of financial assets from one kind of entrepreneurial activity to another one (cross subventions). As well as in the world of financial investments (an estimation of risks concerning all portfolio of data, the real estate and the rest), real investments demand the balanced approach of estimation of activity of the whole company goals and taking risks into account. The big assistance at achievement of well-balanced monetary flow with sufficient liquidity is rendered by drawing up the portfolio matrix.

The portfolio analysis or «market share - market growth» matrix has been developed by the American consulting company the «Boston Consulting Group» in the late 60s. This model is based first of all, on the concept of the product life cycle. The enterprise is characterised by analogy with investment in a financial sphere with the help of the portfolio analysis, that is as the set of so-called strategic production units (SPU) - fields of activity of the enterprise independent from each other which differ by special coherence with products (group of products) and with special circle of clients. Various SPU have various market possibilities and risks.

Theoretical base of various models of the portfolio analysis is:

A) Experience curve.

Along with growth of production volume and experience expenses of resources per a product unit decrease. Researches have shown, that at doubling of production volume cost per unit decreases on the average by 20-30 percent due to following factors - possibility to use progressive technologies, living labour saving at constantly repeating processes, efficiency of management, discounts from suppliers at purchase of large lots of materials, half-finished products etc.

B) Life cycle concept.

While using the given matrix we can assume, for example, that in a portfolio of the managing organisation there are goods (housing type), occupying a certain share (percent from a total sales volume of the given commodity by all market participants) in the market with some potential of growth. Let us consider the components of the given matrix. «Cash cows» are commodities that have reached the maturity stage. High market share is the reason of large advantages in the area of expenses. When the goods occupy a considerable share of the market, and sale growth decreases at the same time to a minimum (supply is at the level lower than required), it promotes receipt of a monetary flow without a lot of efforts. At the expense of high profit brought in by these commodities one can finance the growth of other SPU. The given product demands small investments and executive expenses. One of the strategies that practically always is used — extensive «milking» of the given products.

The major task of the organisation manager — preservation of its share of the market for the purpose of situation prolongation in the future.

«Question marks» - products, that are at the initial stage of the life cycle.

The incomes, brought in due to «cash cows», can be used for the goods that require grants. To remain or introduce them to the market they are promising enough. These products promise high growth rates to the managing organization but they have low market share. With the aid of an offensive strategy and additional investments one can achieve the increase in the share of the market as in the future these goods will bring in a considerable return.

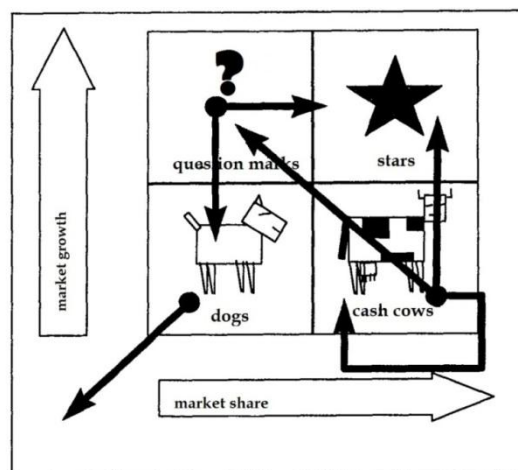


Figure 5.2. Boston Consulting Group Matrix

An offensive strategy with respect to such «jumping» products is definition of development of demand for the given goods for the purpose of acquisition as high market share as possible. Often considerable investments for provision of prospective demand for the product in the market are required. If demand ceases to grow, and the product cannot bring in return for a long period, in such cases it is better to get rid of such goods. «Stars» are at the growth phase of the life cycle. The group of the goods makes some profit that is spent for strengthening of their own position in the market. These products possess rather good sale and have already won a considerable share of the market, but require constant replenishment of investments for conformity to changing tendencies in the market. «Stars», in their majority, take a position which is called «monetary balance». As soon as supply growth stops, «star» becomes «cash cow» as it does not require any more investments for winning of and preservation of considerable market growth of the product.

«Dogs» are related to the stage of saturation and degeneration. They have neither high market share nor high growth rates.

«Cash cows» which gradually lose their share in the market, are of no interest for the portfolio of the managing organisation. The given goods require investments with the big risk potential or turn into the goods that will be never sold any more. Optimum strategy concerning such «dogs» is maximisation of incomes and as large cost reduction as possible. Essential change of the price, alternatively — withdrawal of the product from the turnover in the market may be the other solution.

The «market share — market growth» matrix can be the useful administrative tool creating frameworks of strategic planning. The analysis of market position and market possibilities of a product of any type enables a manufacturer to estimate his manufacturing resources. The basic result of such analysis is possibility of mental structurization and obvious representation of strategic problems of that in what cases capital investments or additional investments into corresponding object are necessary. Organisations managing of housing fund on behalf of other (private) persons, can provide the clients with more realistic ideas what is required and, vice versa, what one should not do.

The main lack of making of such analysis — large difficulties with gathering of the necessary information to get an idea about the most realistic combination of products — markets (CPM).

## 2. «Appeal of the market — advantages in a competition» model

This model has been developed both by experts of «General Electric Company» and «McKinsey» consulting company.

It represents some peculiarities of the model considered above. In the model appeal of the market and advantages in competition are determinatives. The appeal of

the market or the branch consists of characteristics of the market itself, quality of the market, basis of supply and other conditions. Advantages in competition are defined by a relative position in the market, product potential, research potential, and also qualification of managers and employees. This model allows making following strategic recommendations;

- strategies of investment and growth for SPU (in the right left corner of the matrix);
- strategies of exhaustion for SPU (in the lower left corner of the matrix);
- for SPU, located in the middle, strategic decisions are made depending on situation.

The advantages of the model; differentiated estimation of SPU is possible.

Disadvantages of the model; definition of factors of the model demands a lot of information; factors are difficult to operationalize; different estimation of SPU by different users is possible; development of standard strategy on the basis of position of SPU is rather problematic; models are static and reflect only the set planned interval.

### **5.3 The portfolio analysis applied to the housing market**

The analysis and systematization of products by type are effective both in respect to any residential stock and concerning residential stock of social purpose. The «demand growth» term used in «Appeal of the market — advantages in competition» matrix, for any usual type of a product should be understood as «necessity of changes» to satisfy a changeable demand of the given market with regard to the market of Kazakhstan.

It is obvious, that demand for houses is defined by deficiency of various types and categories of housing, as well as by condition of incomes of various tenants and their preferences. Both the income and preferences are connected with «housing career» stage an interested person is at. Not only the income, but also the age, and the household constancy are the factors influencing growing requirement for space and quality (fig.5.3).

«Housing career» can be shown as follows:

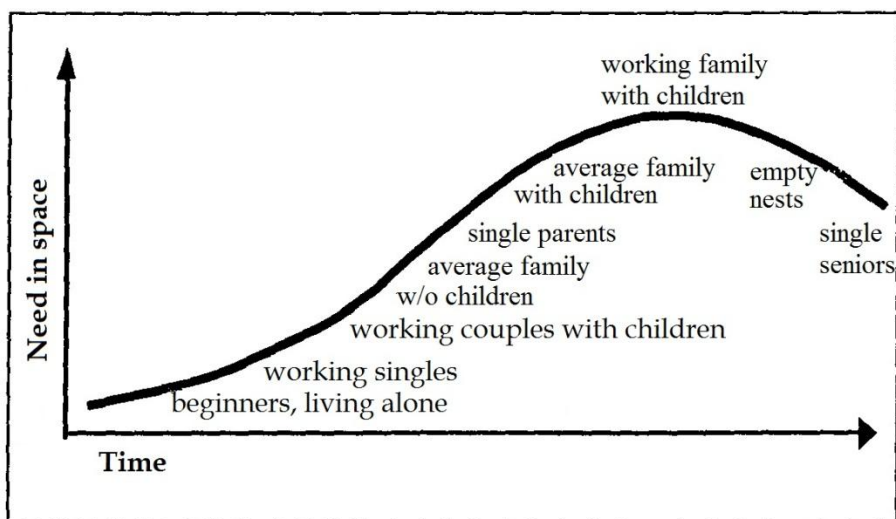


Figure 5.3. Interrelation between requirement for space and housing career factors

The analysis of dynamics of demand in the market is very important for working out of investment and market strategy. The analysis of a parity of the price of the house (rental) and condition of incomes of customers is of great importance. If the prices are too high, users can not afford to pay them, at the same time, if the prices are underestimated, owners (lessors) will receive less income.

If to consider parity between incomes of consumers and the prices, it becomes obvious, that the total sum of expenses on housing and the size of incomes define the total demand in the market of leased housing. If a certain limit of expenses is broken demand falls rapidly. This limit is so-called limit of interchangeability of rent of housing and its purchase.

For both parts of the market - rented housing and the one for sale - its own structure of expenses, as well as its own requirements concerning quality is characteristic. If the quality of leased housing improves, the rent raises automatically. If the quality of housing for sale improves, only its market price grows. There is the difference in possibilities of financing for these cases. In such a situation the credit interest rate is defining thing. If the interest rate is low, purchase and investment in habitation become more attractive, if the interest rate is high the housing rent is more beneficial.

Management at the strategic level is not always corresponds to the level of actual realization of decisions on investment. By comparison of own position with position of «competitor» of housing one can get as complete representation about the market as possible. If to correlate the scenario with the given analysis in which separate tendencies (in demographic development, economy, development of

incomes etc.) have been considered, that there are at the present time, it is possible to receive an idea about «rupture» between the current supply and the future demand.

Making the portfolio analysis allows to determine certain regularities regarding the supply in the housing market (fig.5.4).

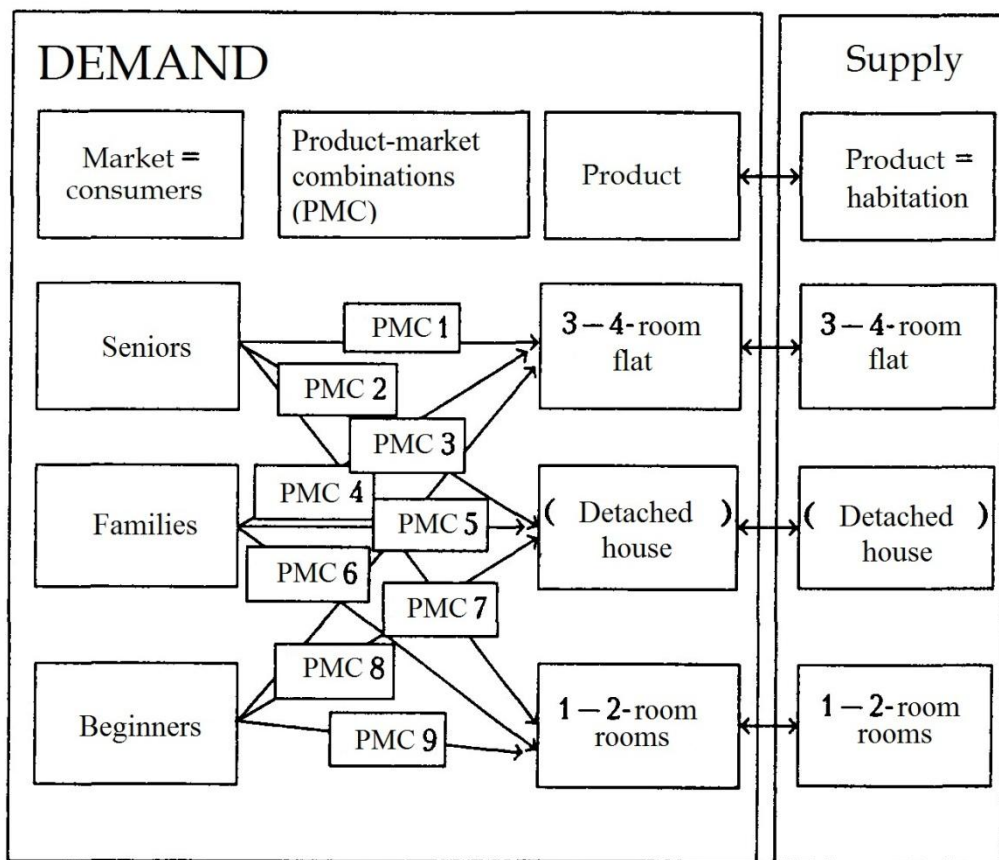
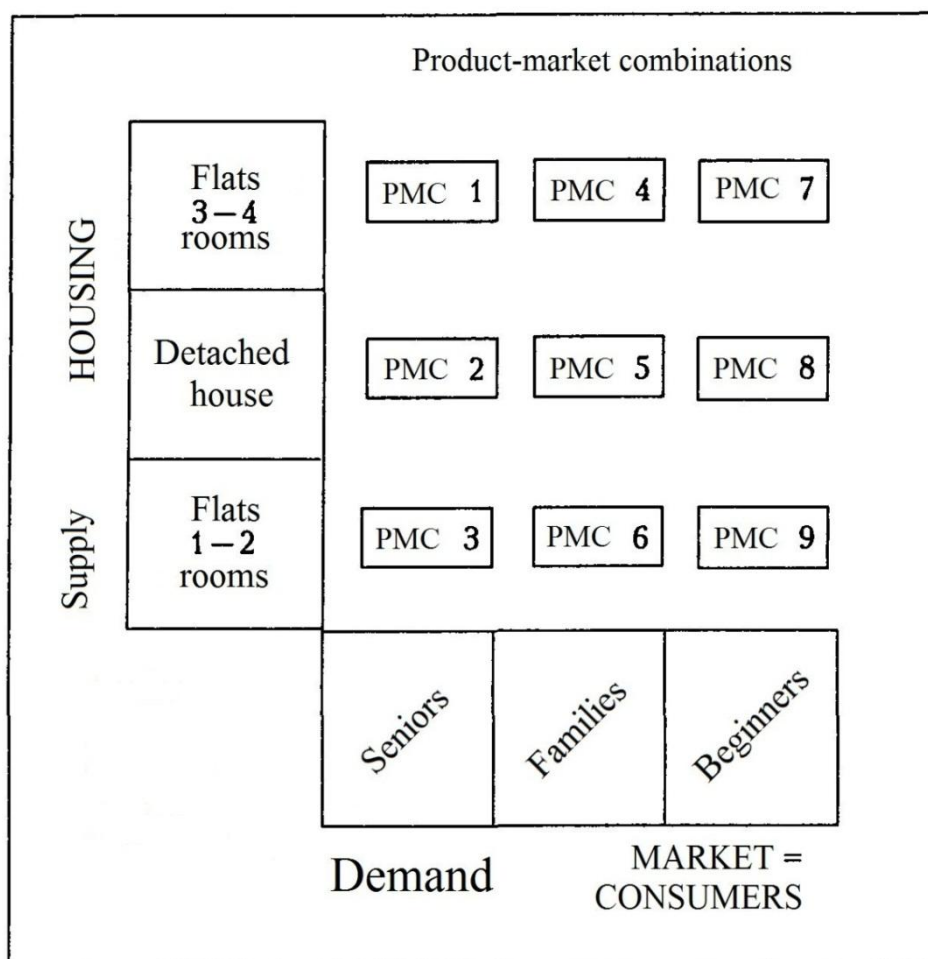


Figure 5.4. Investment portfolio structure

After revealing the present and future situations, it is possible to develop scenarios of possibilities of supply and demand in the market in time, limitation of financial conditions and definition of priorities.

As the simplified example of use of this method may serve three scenarios made on the basis of the scheme shown below (fig. 5.5) in which basis there is an assumption of «greying population» (growth of the number of seniors, decrease of the number of youth).





1. Turn PMC 8 into PMC 2
2. Turn PMC 7 into PMC 1
3. Turn PMC 6 into PMC 9

Figure 5.5. Interrelation between consumer market structure and available housing one

The final choice of the scenario in many respects depends on investment strategy and possibilities of the managing organisation. Bases of formation and market mechanism development in sphere of reproduction of housing fund. The market mechanism can be treated as the complex system of connections providing the balancing of numerous individual freely chosen decisions of sellers of the goods and services — on the one hand, and buyers — on the other hand.

In market economy in housing sphere it is used to distinguish two interacting markets — the market of housing fund and the market of housing services. In the first market as participants there are subjects wishing to purchase housing and the subjects wishing to sell or to build it.

In the second one — the homeowners living in their own houses and apartments, proprietors of housing, wishing to lease it, and also tenants. We will consider the basic elements of these markets.

If demand for housing obeys to the same regularities, as demand for the other products and services then reduction of its price should lead to demand growth. However change of demand for habitation depending on change of its prices has certain peculiarities. These peculiarities, first of all, are connected with differences in elasticity of demand in comparison with other goods and services. The «elasticity of demand» concept is widely used in market economy theory. The elasticity of demand is quotient from division of change of demand (in percentage) into the change of the prices which has caused it (in percentage). The curve of demand with the price elasticity equal to 1, means that drop in prices by 1 per cent will lead to increase in demand by 1 per cent. If elasticity is less than 1 then demand is considered rather inelastic if elasticity is more than 1, then demand is considered elastic, i.e. very sensitive to changes of prices. However, demand for habitation depends not only on the price of it, but on other factors too. One of them is financial possibilities of the population and its solvency. Considering, that cost of apartment or the private house is very high in comparison with other goods and services, the solvency of the population is influenced considerably not only by the level of incomes, but also by development of finance and credit mechanisms. Thus one should remember that current incomes of the majority of the population of the RK being in need of improvement of living conditions are rather low. As the market economy is aimed at profit earning the investors are attracted to those spheres where the prices for the goods are higher than expenses for their production. If the price of the constructed or reconstructed apartment house is higher than costs for construction and repair operations, then the investors will acquire parcels of land, residential buildings needing reconstruction they will hire labor force and firms of building contractors for both construction and reconstruction of housing fund for the purpose of their further realisation.

At the same time inflow of investments to sphere of reproduction of housing fund will influence the condition of other markets - contract works, the real property, building materials, etc. This influence will be expressed in increase in demand for an offered production. Hence, when demand (for example, for building materials) increases the prices will increase too. So will occur to all manufacturing factors required for construction and reconstruction of housing fund. Heterogeneity of housing fund defines considerable differences in market prices for housing services too. To define a market price of housing services for a concrete housing fund, Western economists often use the hedonistic approach which is based on division of the whole set of useful properties of dwelling into components that have their own

latent price. Thus the housing fund characteristic is used to be divided into three groups — quality of housing, its sizes and the plot characteristic. These groups can include various quantity of components.

Let us dwell on consideration of the housing services market. In the rented housing market, housing services are sold and bought, and as the price there is the residential rent. The housing services, provided by the housing fund, are bought and sold in the market of housing renting that differs from the market of housing fund by an invariance of the proprietor, — the property is not transferred from one person to another one, but it is provided for temporary use for a payment. As it was already mentioned above, the housing fund characteristics are not homogeneous. Quality of housing services will depend on the level of its comfortableness, age of structures and volume of repair operations have been made along the whole length of its service. Thus, the volume of housing services in a certain extent depends on volumes of maintenance and repair of housing fund, expenses on which are a part of a rent, i.e. finally are borne by the tenant.

For visual representation of interaction of the markets of housing resources and housing services we will use the diagram shown in fig. 5.6.

The diagram consists of four quadrants; let us mark them by 1,2,3,4 figures.

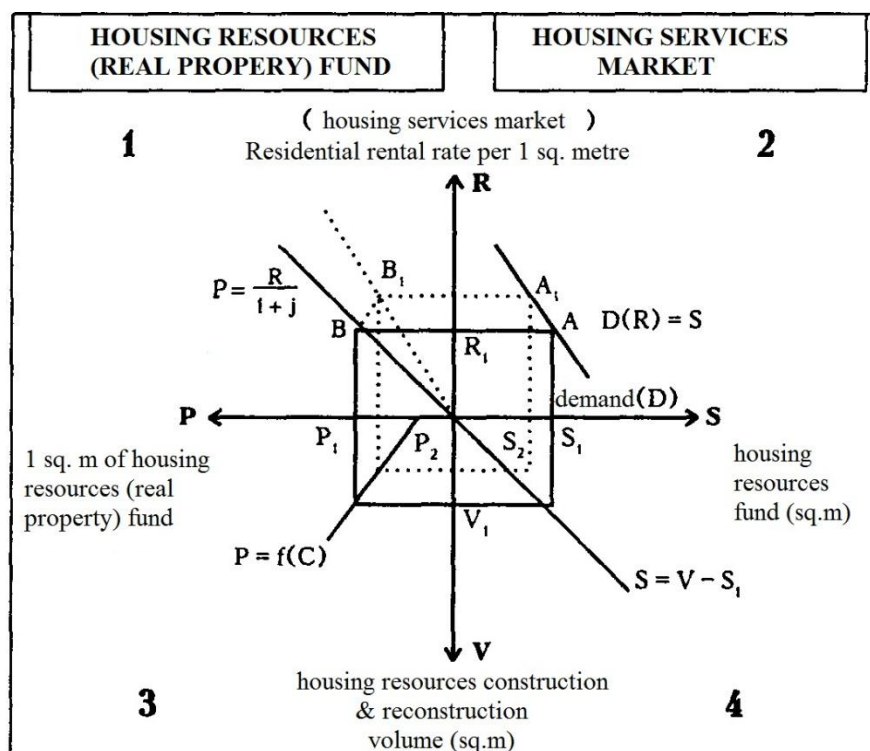


Figure 5.6. Interrelation between markets of housing resources fund and housing services

The first square has two axes reflecting the rate of residential rental per 1 sq. metre, and the quantity of housing fund measured by sq. metres too. In this square the diagram of dependence of quantity demanded for housing fund on the residential rental size is shown at the given level of economy development. Let us assume, that at A1 point the demand for housing services (D1) at the existed level of residential rental (R1) is equal to the housing fund supply (S1) 1 i.e.  $D1(R1) = S1$ . Building from A1 point perpendicular lines to diagram axes, we define the residential rental size - R1 and quantity of housing fund in the market of housing services at the present time - S1.

Having defined, thus, the size of the residential rental, we will pass to the housing fund market - to the square number four.

The fourth square has two axes — the size of the residential rental and the price of unit of area of housing fund in the real property market. The ray inclination starting from the point of origin, depends on a situation occurring at the moment in the financial market. As this ray reflects the relation of the size of residential rental (the income for the investor) to the housing fund price (expenses of the investor) calculating on one square metre then its inclination will be defined by the rate of return size (capitalization rate), there is at the moment in the financial market. This rate accounts risks and normal profit of the investor in the considered business area. Increase of the rate of return will cause the rotation of ray clockwise, and its decrease — to the rotation in an opposite direction. The rate of return here acts as the external factor since it is based on rates of interest and rates of return in more extensive capital market, including securities, shares and short deposits.

By results of risk calculations the conclusion on the possibility of realisation of the investment project, scales of its financing, the sizes of offered guarantees for is made, and also measures with the purpose of risk management are developed. At the diagram for definition of the price of housing fund in the real estate market it is necessary to drop from the B point on the P axis (price) a perpendicular. As a result we will receive P1 point corresponding to the balanced price of one square metre of housing fund. The third square represents that part of the market of housing fund in which scales of construction and housing reconstruction are defined. The graph shown in this square, expresses costs for making of construction and repair operations. These expenses at increase in volumes of construction and reconstruction grow, since there is the interaction with other markets reacting to increase of demand by increase of the prices for resources. A graphic dependence of costs on volumes of construction and reconstruction originates in  $P_0$  point located on the axis of the price of one square metre of complete housing.  $P_0$  point corresponds to a minimum level of the prices when construction and reconstruction of housing fund still remain profitable. If to assume, that costs for construction and reconstruction do not depend

on their volumes then the diagram is a vertical line. Having defined the cost of one square metre of housing fund in 4 (P1) square, we draw a vertical line downwards to the graph of expenses for new construction and reconstruction of housing fund, and then — a horizontal line to a vertical axis. Thus we receive a C point, corresponding to volume of new construction and reconstruction of housing fund at which expenses for making of construction and repair operations are equal to housing fund prices in the real property market. At a higher volume of construction and reconstruction of housing fund making of construction and repair operations will be detrimental.

In the second quadrant the annual volume of new construction and reconstruction of housing fund will be turned into housing fund gain. Change of quantity of S housing fund for the given period of time is equal to volume of new construction and reconstruction of housing fund minus quantity of the retired one — S1:  $S = V - S1$ .

The ray originating from the centre of coordinates in the square 2, reflects dependence of quantity of housing fund (on S axis) on ready volume of new construction and reconstruction of residential buildings (on V axis) taking their retirement because of complete physical depreciation. This dependence allows defining necessary volumes of construction and reconstruction of housing fund at which its quantity will remain invariable.

Proceeding from quantity of housing fund in the market of housing services, one defines the residential rental size that then influences the price of acquired housing fund in the real property market. These prices, in turn, regulate corresponding volumes of new construction and reconstruction of housing fund. Thus, there is a constant process of self-regulation of the markets of housing fund and housing services.

The B point will take a new position corresponding to the B1 point. We will mark by dot lines projections of the B1 point to the coordinate axis while doing a complete revolution clockwise with the return to the initial point (B1). Thus, the received rectangle depicted by dot lines, allows making conclusions on the occurred changes. The size of the residential rental in the market of housing services has increased till the R2 size. In the real estate market there will be a reduction of prices on housing fund because of reduction in demand for it at the investors whose means will be involved in more attractive market. The price of one square metre of housing because of it will go down from P1 till P2. This circumstance, in turn, will inevitably affect reduction of volumes of construction and reconstruction of housing fund. At the same time there will be a decrease in profitability of functioning of building and repair enterprises due to drop in prices for complete housing. Decrease in volumes of construction and reconstruction of housing fund will reduce rates of reproduction of housing fund and its quantity in the market of housing services will decrease. At the

same time there can be positive measures of influence on the housing market. So, for example, change in availability of long-term credits can increase solvency of the population concerning housing with all consequences following from it. Each concrete change entails various consequences that easily enough can be traced by consideration of variants of decisions on a basis of the mentioned model of interaction of the markets of housing fund and housing services. The account of such factors of housing complexes as demographic, social and economic (incomes and buying power changes, employment and unemployment, structure of the local and regional supply) ensure the formation of an optimum portfolio. Revealing and comparison of strategies with supply changes in the market are the main objective of researches. The reliable statistical data is necessary for qualitative research

The analysis of large volume of information can be useful not only for a current research, but also for researches that will have to be made in the future. Thus, data gathering about own housing fund by surveys is necessary.

#### **5.4 Field audits**

Detailed audit of existing fund is a starting point while working out the strategic housing plan. The audit should cover four main points:

1. general conditions: what are social and economic circumstances?
2. available housing: what do we have?
3. structure of ownership: who are the tenants?
4. result of activity: what occurs within the limits of the available housing?

Each of the given main points is considered in detail below. Probably, existing available housing consists of several buildings situated in different places or even in different districts. The most important aspect for carrying out of audits is product definition, for example, apartments with comparable qualities or detached houses for one family.

*General conditions: what are social and economic circumstances?*

The social and economic structure of a region influences the present and future demand for a product. In spite of the fact that the detailed information can be inaccessible, it is extremely useful to receive as clear idea as possible about conditions in which one has to work since it defines success or failure of any plan. At regional, local or district level various aspects concerning as present time as forthcoming ten years should be considered. The social and economic structure of a region is influenced by macroeconomic risks.

The social and economic structure:

- population development (increase/decrease);

- population characteristic (the tendency of the average age increase of the population, a youth share, marital status);
- level and growth of incomes;
- employment and changes in the area of population employment;
- government and state policy in the housing area (rent, subventions, distribution, taxes).

*Available housing: what do we have?*

The portfolio analysis first of all should give an idea about characteristic features of available housing that is the basic object of our analysis. The housing characteristic features: its historical past, locus, its present condition and plans for the future should be carefully studied and registered in documents.

Characteristic features of available housing:

- combination of various types of housing (cottages/apartments/high-rise buildings);
- sizes (number of rooms/area);
- available housing structure by property types (property of tenants/ social rent/rent in a private sector);
- discount size of rental payment;
- market cost of housing;
- financing of available housing.

Historical past:

- year/period of construction;
- year of the last repair (rebuilding, renovation).

Locus characteristic features:

- located within city boundaries (downtown/dormitory district/suburb/countryside and so forth);
- function relations (commercial districts/schools/offices etc.);
- reach (by car/public transport);
- estimation of locus quality in comparison with environs/district.

Current condition:

- conveniences (electricity, gaz, water and heat supply, phone and so on);
- maintenance;
- possible plans concerning current repairs/schedule of works;
- estimation of object quality in comparison with other objects in a quarter/district. *Structure by ownership type: who are proprietors and users?*

It is very important to receive representation about ownership structure. At that the question is about precisely those persons who are directly interested in considered housing. They should pay a rent or in case if the housing is in their ownership, they

should pay repair work. To questions about structure of families and level of incomes of tenants the detailed answer for each type of object should be found.

Users:

- structure of households (singles, childless couples, families with children, students);

- age (seniors, youth);

- forecasts (natural increase, ageing, children).

Level of incomes:

- estimation of incomes of tenants (within the house, quarter, region (low/average/high incomes);

- forecasts of incomes change.

*Result of activity: what occurs within the limits of the available housing?*

The ownership structure is not time-independent. It is useful to know, what changes occur, for what reason and what type of the property they concern. Besides, it is necessary to verify the received rent, and for cases of condo and cooperative flat — contributions for repair. Such kind of information gives an idea of a ratio of supply and demand, financial stability and satisfaction/dissatisfaction of users (tenants).

Changes in the property structure:

- Who are new lodgers?

- What tenants are moving out/going to move in?

- What type of objects does it concern?

Financial issues:

- In what condition are there earnings from a rent payment/payment of accounts?

- What are the sale results of various types of a product?

*Final formation of the strategic approach.*

If all measures mentioned above are accounted in a developed strategic plan, a real property manager will get the choice of various alternatives that will allow reaching the planned purposes. The grounded choice for the future is the most important managerial task.

Hence, components of the strategic approach are:

- supply and demand analysis concerning the available housing in the region and the share of the market occupied by the central organisation;

- forecast of possible supply and demand changes in the housing market in the future on the basis of demographic factors, development of buying power and preferences of the population regarding a residence place. Opportunities and threats are described on the basis of comparison of one's own objects with objects of competitors on the market;



- division of a local situation into several residential zone (SWOT analysis). Concerning each of zones on the scheme advantages and possible losses are specified;

- consideration of various variants from which the final choice can be made for the purpose of the best use of chances and prevention of threats.

By means of the given information the decision can be made on a choice of objects, investments in which are required and justified. With the aid of the developed computer programs it is possible to consider financial aspects of operation of the real property object too.

## TOPIC 6. THE TACTICAL LEVEL MANAGEMENT

### 6.1 Characteristic of the real property

Buildings, land, infrastructures are necessary to meet the city needs by «city objects». Various kinds of infrastructure are used for this purpose.

These three components of a city/town that are named the real property are closely connected with each other. The infrastructure is a connecting link between buildings and land. It concerns not only transport system, but also various systems of pipelines, a cable network for power supply, telephony and other systems of communications. The infrastructure is, as a rule, utilities (meaning the system of common municipal use), provided by the state. With development of information technologies and emergence of both the pan-European legislation and in Kazakhstan of the Law «About privatization and denationalization of state property» the part of infrastructure has been privatized. Purchase and sale of the parcels of land and buildings take place in the real property market. Buildings serve for placing and performance of various functions. Simultaneously buildings are objects of investments, a source of the information on the user. The land can perform various functions even after insignificant treatment (for example, park, an agricultural holding or a football field). In cities the land may be considered as real property-half-finished product on which buildings and objects of infrastructure can be erected. The city object «land» is the important tool in hands of local authorities for the decision of social and economic problems. Making a choice concerning the future purpose of the land lots the municipality defines city structure; thus the purpose plan by districts contains certain requirements to the architectural and building solution and a functional purpose of the parcels of land and/or buildings erected on them. Defining also the moment of occurrence of land lots in the market, the authorities are able during short as well as long time period to influence trend of affairs and to manage city development according to the developed plan.

The result of sale or area separation is that the area for many years «leaves a turnover», turning from the «dynamic» tool of management in «nondynamic» object of the real estate.

While the land is sold on the real estate market, it is necessary to consider demand for it in the future to an even greater degree than in case of two other city objects. It is connected with plot preparation for development, sometimes with necessary purchase of the additional land that demands procedures and expenses for plot preparation etc. As any goods, city objects go through a certain life cycle in their development. As it was mentioned in section 2, 1 the objects, as well as a product, pass through some stages of development, beginning from the emergence in the

market and till its disappearance from the market. If the consumer makes new demands, the object passes to a new stage of life cycle.

*Concepts of city objects life cycle.*

The concept — complex notion including as the element of architectural and technical solution (developments of a certain type, for example, the concept of "Khrushchev buildings" or «cottage township»), as the package of services connected with this solution.

Not only the goods, but also concepts are subject to changes and, so, pass through their life cycle. So, «industrial enterprise» object as a part of a certain concept is connected with «industrial zone». If the concept changes, the character of an industrial zone changes too.

Dynamics of business activity expressed in change of quantity of workplaces, movement, expansion etc., on an industrial site decreases considerably while the site moves through its life cycle. It is possible to note too, that while the site comes through its life cycle site factors start to represent the lesser value, and the site appeal decreases as a whole. It is possible to make conclusions, that site «ageing» causes radical actions to create greater value and appeal that in turn could attract the consumer. Thus it is necessary to mention, that low appeal (low value) is not necessarily a negative point for the enterprise: there is «bottom part of the market» for which presence of cheap sites or buildings is not the least of the factors.

Not only industrial sites, but also office quarters, shopping centres and residential areas are subject to ageing. The aforementioned cases are related to them too.

*Layout and rebuilding. Renewal and accomplishment of objects.*

To increase the interest of the tenant enterprises in some city object it is possible to undertake following steps:

- stimulate a diverse use;
- try to find new groups of users (for example, to reshape enterprises for housing, city libraries, museums etc.)

Stimulation of a diverse use and search for new tenant enterprises may raise appeal of an object and prolong its life cycle if then actions on its qualitative transformation do not follow.

It is necessary to note, that the life cycle of the real property objects becomes ever shorter. It concerns, first of all, a commercial property. Office and industrial buildings 10-20 years' prescription even more often are exposed to radical replanning for appeal preservation on the market. It is connected with rapidly changing requirements of consumers. Often one has to face the fact that in particular in the fast-growing market, wishes of potential users are taken into account insufficiently. The problem becomes aggravated, if because of insufficient knowledge of the market

or the changed circumstances not only the building mismatches inquiries, but also the site does not meet requirements of potential users.

More often the city authorities are interested in new objects; nevertheless it is necessary to pay attention to the life cycle of already existing objects. It is caused by several reasons:

- maintenance of the required level of the sold objects for satisfaction of inquiries of their users and, thus, preservation of appeal of these objects as a place to do business;

- research of possibilities and advisability of the existing object change;

- necessity to get the required information and data on a state of affairs in the market, in particular, definition of demand for new objects.

#### *Management of funds at the tactical level.*

The management at the tactical level corresponds to performance of the established concrete program regarding the management of separate real property complexes. Considering significant distinctions in management and peculiarities of requirements of consumers, the real property portfolio, as a rule, is divided into corresponding segments. For the investors having a certain portfolio, management of property (funds) mostly means operation realisation (including sale) of that part of a portfolio which makes up the real estate.

The real estate under the authority of fund manager (and management of it) can be subdivided also by a territorial sign. The choice of portfolio structure depends on what value is attached to knowledge of area, or valuation in the field of operation of a certain type of the real estate.

The fund manager at the tactical level finally is responsible for the total profit for all operation period of the considered portfolio (or its part).

The key moment in management of property at the tactical level: the profitability analysis as a result of it:

- «policy concerning complexes» has to be developed;

- support of relations with consumers (tenants), with managing organisations, real estate agents and advisers should be provided;

- tactical program for needs of an operative management of the real estate and its coordination with portfolio management should be developed.

For working out of the tactical program and further realisation of an operational administration of the real estate to get the maximum profit during operation (as well as for the increase in value maximisation at sale) the fund manager at the tactical level should make the annual analysis of portfolio structure as a whole and of each complex separately. The policy concerning complexes generates the information necessary for the analysis of portfolio profitability for its efficient control, as well as the specific information necessary for decision-making in the field of operation of

separate complexes. It concerns decision-making time regarding timely carrying out of renovation, rebuilding or sale of the considered complex. Data of the analysis of profitability of separate complexes taken together serve as a comparative estimation while making up the estimate of incomes and expenses.

Decision-making process concerning complexes consists of five stages:

- 1) inventory;
- 2) analysis of: changes, object, external factors, tenants;
- 3) working out of possible scenarios;
- 4) calculation of further monetary funds flow (earnings and payments);
- 5) selection of: operation method, budget, profitability, organization.

## **6.2 Inventory. Analysis**

For making analysis at the subsequent stage, the data consisting of parameters of model of the calculations defined on the basis of portfolio management is necessary. Such parameters are: credit interest rate, risk premium, predicted inflation rate and price indexes.

The information is required for the competition analysis as about a current condition of the market around the considered complex, as about possible changes, occurrence of new buildings and changes in the general municipal plan. At the tactical level the manager should know a situation in the real property market in the country, in a region, in a city, economic and both fiscal and monetary and socio-political factors. *Economic and fiscal and monetary factors*

### **1. Inflation.**

Inflationary decrease in incomes from rent is compensated by rent indexing. As practice shows, the rent growth in the market matches with the inflation rate far from always. Owing to this fact after expiration of lease contract one has to lower rent rates till the market average level. Hence it follows, that protection against inflation is valid only in a case when change of rent rates in the market corresponds to the rate of inflation or exceeds it. By indexing of the rent rates one can achieve virtually sufficient protection against inflation. It is one of the factors defining the real property cost in an investment portfolio. At an invariable asset value the inflation growth causes the decrease in real (actual) value of funds. When expecting a high inflation investors are inclined to invest in the real property.

### **2. The level of credit interest rates.**

High interest rates make investments in securities with the fixed percentage attractive, and investments in proprietary assets (real property) are less attractive. On the contrary, a low level of interest rates favours investments in the real property. In

this case heightened interest in the real property leads to a rise in prices in the market of the real property objects.

### 3. Deterioration and depreciation of the real property.

The real property, especially office premises, is subject much more to technical and economic ageing, than residential buildings. It causes the decrease of the required profitability level. Depreciation includes decrease in real value of a rent and, thereby, the object cost. Depreciation consequence is growth of expenses for its maintenance, insurance and management. Carrying out purposeful repair and commercial policy (timely modernisation, replanning and rebuilding), it is possible to limit or neutralise influence of deterioration and depreciation of the real property.

### 4. Economic growth.

Growth of gross domestic product (GDP) of a country, as a rule, entails a simultaneous growth of investments into the fixed assets, growth of employment of the population and growth of national consumption. Economic growth in sector of services leads to increase in quantity of office workplaces and, as a result, to growth of demand for office premises.

### 5. Tax legislation.

Legal, tax and other legislation are of great importance for investments into the real estate and its operation. The mentioned factors from the point of view of the investor define expediency of investments in a country or a certain region. Tax aspects for they influence the monetary funds inflow of the investor are especially essential. Distinctions in the legislation concerning rent and regarding payment of utilities in various countries are rather large.

### *Socio-political factors*

#### 1. Demography.

Changes of demographic nature make direct impact on development of the real property market. «Rejuvenation» (a percentage gain of a share of youth in the general structure of the population) or «graying» of the population (increase of seniors share) in a country, a region, a city/town or district strongly influence both the construction of new and functioning of existing real property objects. It, first of all, concerns housing and trading spaces, and indirectly too, via changes of able-bodied citizens number, sector of office premises.

#### 2. Locus.

The object locus influences investment value of the real property. At the tactical level the fund manager should constantly monitor occurring events that may influence the object locus appeal. The enterprise locus choice is determined by presence of highly skilled personnel.

#### 3. Tendencies.

Development of the real property market is caused too by tendencies in the field of family relations, labour organization, working hours, leisure time passing etc.

Changes in spatial and economic policy are in many respects defined by political methods - as at the state level as in regions and on sites. The spatial and economic government policy is of great importance for investments into the real property.

### **6.3 Policy formation concerning complexes**

At previous stages the manager has selected several scenarios at the tactical level. At the operative level the manager should convert these scenarios to the form of necessary offers as regards management concerning operation, budgeting up additional investments, estimates of expenses and incomes in short- and long-term prospect and so on. As a result the so-called «actualized» policy concerning complexes is submitted for approval of the manager as a portfolio. After corresponding check the program of the real property management is affirmed and transferred as the assignment to the manager for the next operational year at the operative level. At the tactical level the fund manager develops on the basis of the approved policy concerning complexes tactical and operative plans of operation of the considered complex and allocates to the operative manager the budget for their performance. In other cases the fund manager instructs to sell the considered complex.

#### *Support of relations with partners.*

The second important problem demanding attention of the manager at the tactical level is so-called maintenance of relations or management of relations with partners which makes up the important part of performed marketing policy. At the tactical level the most important partner for the manager is a potential user (tenant). For the manager it is important that tenants are considered as his property (value). The approach directed to meeting requirements of customers is important in every respect. At the tactical level the fund manager must work out the line of behavior the operative manager should adhere to and the former one should inquire about its following. Research of clients' satisfaction is one of the control methods over that whether relations with tenants are properly maintained and if changes in relations are possible or required. At the tactical level partners of the fund manager are operative managers, as a rule — organization managers in the real property area. These managers need instructions of the fund manager. Instructions include activity descriptions regarding the real property management and also payment for work, drawing up and allotment of budget, the instruction on keeping up relations with clients, instructions concerning the maintenance (planned and minor off-schedule

repair), as well as the control, a regular data survey for management needs, the annual reviews of the specific market information about market conditions directed to realisation of the aforementioned policy concerning complexes.

*Conclusions:* at the tactical level the fund manager has to achieve optimal profitability at an operation phase (part) of a portfolio by making every possible analyses of separate complexes and development of policy regarding complexes on the basis of received results and also take care of the maximum cost increase of each complex separately. For this purpose the correct choice of time of decision-making is extremely important during operation. As for issues of the operative administration the fund manager plays a guiding role in relation to the real property manager. In so doing, the fund manager is engaged in budgeting and development of marketing policy and the real property management plan. At the tactical level the initiative of attraction of probable additional investments or object sale appertains to the manager. It is he who gives instructions regarding their performance. He is also responsible for the rent policy and positioning of the complex on the market and ultimately responsible for keeping up good relations with consumers (tenants).



## **TOPIC 7. THE REAL PROPERTY MANAGEMENT AT THE OPERATIVE LEVEL**

### **7.1 Management control**

The administration problems include: registration, systematization and processing of the information on all incoming and outgoing monetary flows in the process of the real property operation, including drawing up of reports according to the current legislation,

This list is supplemented with instructions of the manager at the tactical level. Besides that gathering, systematization and processing of the information concerning the real property and users is made for needs of information support of management at both operative and/or tactical level. Individual components of the management control:

1. collection of payments
2. control over tenants change
3. conduct of expenses to pay for utilities
4. preparing reports and so on

*Collection of payments. Control over tenants change.*

According to the rent contract users are obliged to make monthly or quarterly payment for the provided premise. The rent may or may not be liable to VAT depending on the country legislation. The payment should be transferred by the tenant to the investor's account or the managing organisation at the certain moment of time (mostly, in the beginning of a month or a quarter). Sum transfer can be made by the automatic collection of payments (automatic writing off from the account of the user) or by payment of the sent invoice. The rental payment, as a rule, is increased to the sum of advance payment for service and in some cases, for advertising that later is taken into account while making final payments with the user. The administration sees to distribution of invoices and supervises reception of payment or delays in payment. In case of nonpayment the user gets a warning and if it is necessary there can be further sanctions to the debtor.

The termination or the conclusion of a new lease contract occurs according to the established procedure. These operations entails information interchange among the user, the fund manager at the tactical level and some management departments at the operative level (administration, technical and commercial departments). The received data is processed and further is used for making analyses and consultations regarding questions of management policy.

*Control over expenses for maintenance.*

The lease contract indicates those services which rendering by a manager at the tactical level falls on the user. On the basis of the estimate of expenses monthly or quarterly advance payment is defined that is taken into account in regular settlements with the user. The volume of a package of services paid by the user varies depending on market sector and contract type.

They make calculations of both all costs and made advances annually. Settlements with users are being made on the basis of the received balance. At the same time expenses for administration dealing with service also fall on users. Thus, total expenditure the percent of expenses for administration is added to. To get relative indicators they use data of the analysis of expenses that are systematised by sectors, real property kinds, housing type.

#### *Preparing reports.*

At the tactical level as the informational support of management acts the data of operative administration that are prepared by technical and sales department with necessary processing of all financial and economic data as periodic and occasional reports. The same concerns the reporting of the manager at the tactical level to the manager of portfolio and property fund (strategic level). Such report is given quarterly, sometimes monthly, according to a set form.

#### *Repair by complaints from users.*

Complaints of users concerning malfunctions, operating conditions of the real property, defects or bad service should be considered politely and promptly. Procedures of their consideration vary depending on type of the real property. At first the complaint should be analyzed along with examination of a scene of an accident or without that. Then it is necessary to define, who bears responsibility for a malfunction and at whose account there will be execution of works to eliminate it. One should discuss all these points with the user. In case of housing premises, elimination of malfunctions within apartments or houses is at the expense of users and is made by the tenant himself though management consultations by technical experts of the managing organisation are possible. In complexes or houses where there is a house manager or a superintendent, these officials may play an important role in processing of complaints.

#### *Repair due to tenants change.*

After getting tenant's removal notice the caretaker should inspect the vacated premise, draw up the examination report and report back to the technical department. First of all so-called preliminary examination during which one makes audit of the rented premise and defines the cost of those works that should be done at the expense of the tenant before his departure. The tenant should be informed that he should give the rented premise back in the initial state (according to provisions of a lease). If it is necessary, instructions on departure procedure are given to him. Other tenants of the

same stairway enclosure should be informed about it too. It is necessary to agree about making of final examination before or in the day of both contract termination and departure of the tenant.

#### *Scheduled repair.*

The technical manager gives all necessary data to the manager at the tactical level concerning the repair policy, and also initial data on budgeting of long and short-term prospect to develop the general property fund policy. On the basis of this policy the manager at the operative level receives instructions about the organisation of works for the complex maintenance. On their basis the technical manager can conclude about the financial budget on carrying out of planned repair operations. The budget of planned works is made on the basis of the real property inspection certificate. Thus the budget of forthcoming year and one of long prospect (5 - 10 years) are made separately.

## **7.2 Commercial management**

Professionalization of the real property management is especially noticeable in this area of the operative administration. If earlier the real property management consisted in administrative as well as technical management, then nowadays commercial management has become important. The majority of innovations regarding the real property management have emerged in this area. Commercial management is of great importance in all sectors of the real estate market: in housing, in trading and office premises. Intensity and methods of management differ from sector to sector. The problems of direction and coordination of management of the real estate at the operative level are solved in the commercial management department. At managing organizations it is expressed in the manager's functions concretization.

The real property manager at the operative level is responsible for maintenance of contacts with the manager at the tactical level who, as a rule, is the customer, and also with users. He coordinates the operative administration and from the commercial point of view manages the administration and the technical department, irrespective of hierarchical structure of management.

The commercial management reflects the purposes of the real property operative administration.

Among specific goals of the operative manager, it is possible to name:

- everyday management coordination,
- conclusion and prolongation of lease contracts,
- consultations concerning issues of the real estate purchase and sale,

- marketing policy development,
- information gathering for management needs,
- consultations concerning (necessity) of additional investments or withdrawal of means,
- rental payment changes,
- processing of complaints from users,
- coordination of market studies,
- maintenance of connections with tenants,
- consultations of the manager at the tactical level regarding questions of the policy concerning a complex on the basis of the aforementioned analyses and revealing of the future tendencies, changes.

All these measures are directed on achievement of a rational parity of profitability and risk regarding the whole managed property fund.

*The activity organisation concerning the real property maintenance.*

Provision of full-fledged operation during the whole life is ensured owing to peculiar «toolkit» including technical regulations and rules, research and estimation methods, conditions of separate structural components. The activity analysis for the maintenance of the real property object in foreign countries shows that one of the main tools is the technical passport of the real property object. This similar name is understood as the real estate operation and maintenance instruction. It is necessary to note an essential difference between these two notions. The object is operated by the user — a tenant, an entrepreneur etc., in this sense operation is the synonym of the use. For the normal maintenance of the object it is necessary to have a precise idea about service conditions: limiting load values and their nature, both permitted and forbidden actions of the user. Whereas the object is maintained by specialised organisations carrying out those or other kinds of works (sanitary cleaning, garbage disposal, removal of solid domestic wastes, repair etc.). The technical passport combines information dealing with maintenance and service. It creates necessary conditions for the coordination of interests of all parties involved in the maintenance of the object. They paid too little attention to issues of the maintenance of the real estate in a proper condition and its care while designing, order-developing and building of apartment houses. Condominia have rather little knowledge in the area of the real property scheduled maintenance and its care. One of the problems of application of the building technical passport — data transmission about buildings and the machinery and equipment related to them in the form convenient for use by owners and customers of buildings, organisations caring about the real property and tenants. The building technical passport performs the information system functions too. All documents necessary for the real property maintenance and service (for

example, drawings, technical documentation, instructions on servicing of the equipment and structural elements, received from manufacturers) are included into the the building technical passport as attachments. In the technical passport they record the object repair history too, it can help while designing a new repair.

The building technical passport is prepared so that with its help at the real estate object (within a building and on external territories) it would be possible:

- after the construction termination or major repairs of a building to begin in the planned and expediently calculated order care, service and keeping in order of structures, equipment systems and yard territories;

- constantly perform functions of care, service and keeping in order the real property so that along with economically small expenses to receive desirable residence conditions;

- to ensure the planned maintenance periods and terms of operation of structures and equipment systems, and also effective energy and technical economy;

- to assure the proper drawing up of contracts on care of the real estate, and also taking of measures for care and service and the control over their performance.

The building technical passport consists of materials drawn up and gathered for the certain project. When a new building is constructed the technical passport is thus made that it reflects important data for the object, namely:

- general data about the object,

- contact data of participants of designing and building of the real property object,

- problems of maintenance, service and keeping in order both structures and equipment,

- data on location of the most important machines and premises of maintenance and necessary quantitative data,

- internal and external surface structures,

- planned performance of internal climate, other planned performance, quality level of servicing and maintenance, and also working indicators of systems,

- planned life of the major structures and structural elements, established at the design stage,

- quantitative data of machines for keeping in order, and also assumed periods of the maintenance and tasks,

- keeping a daily journal of repair and monitoring of annual consumption of material and technical resources to make a repair,

- instructions on actions at both exception and emergency conditions

- data about technical passport attachments.

Other materials, in particular, the revised project documentation, are defined separately in contractual documents.

Besides, one gives to each person disposing of a flat instructions regarding flat maintenance (instruction for the tenant).

In case of the project of major repairs the technical passport of a residential building with attachments it is recommended to make, transfer and revise it in the same way, as while projecting a new construction, but taking peculiarities of major repairs into account.

Preparation of the technical passport sets problems and charges all construction participants, i.e. customers-developers, designers, inspectors, contractors, manufacturers of materials and their suppliers. To create the technical passport it is necessary to appoint either the draftsman or the coordinator responsible for it who will combine materials and will make instructions on service and other documents. The coordinator's task consists in the technical passport revision upon guarantee year termination. As the coordinator can act, for example, the one of designers, inspector or customer-developer.

### **7.3 Private available housing management**

Private available housing management is carried out by proprietors, association of proprietors of residential premises, or managing organisation on the instructions of the proprietor of association of proprietors.

Housing relations in the Republic of Kazakhstan are regulated by the Law «About the housing relations», appeared April 16, 1997, by norms of the Civil code and by other legislation published according to them. In article 5 of the named Law it is defined, that proprietors of premises (citizens, legal persons, state) have the right to unite as any, not forbidden by the legislation, association for mutual operation of an apartment house.

In the apartment houses belonging to two and more proprietors of premises, the special form of ownership - condominium is created, and at that it is the most widespread form of joint ownership.

Condominium – common form of ownership on the real estate as a single property complex when premises are in the separate (individual) ownership of citizens, legal persons, state, and the common ownership belongs to them as the joint ownership.

Condominium may consists of separate part of the building with the size less than one section block having isolated from other parts of the building an entrance and interflat staircase and elevator unit. The separate part of a building may be separated in a separate condominium provided that an overstorey, reconstruction, rebuilding or a pulling down of this section block do not break integrity of other parts

of the building that are not a part of given condominium. The proprietor of a premise in a condominium (houseowner) can be any physical or legal persons, subjects of the RK and municipal formations. A premise in a condominium can belong to several proprietors in the capacity of common property acting as the single houseowner. Several premises in a condominium may be in ownership of one houseowner. The common property in a condominium serve more than one houseowner that is interflat staircases, stairs, elevators, elevator and other shafts, corridors, roofs, apparatus floors and basements protecting bearing and nonbearing structures, and also mechanical, electric, sanitary and other equipment being outside or within premises and serving more than one premise, the adjoining parcels of land within the established borders with landscape gardening and accomplishment elements, and also other objects intended for service of a single complex of real property of condominium and serving to its use.

The parcel of land is passed to condominium as rent or as the property. The sizes of a site are defined according to the town-planning documentation, town-planning norms and calculation method of the standard sizes of land lots in condominiums. Common property in condominium is in joint ownership of houseowners. The adjoining land lot and other common property in a condominium may be burdened with the right of the limited use (servitude) by other persons. The share of each houseowner in the right of the common ownership to the common property in a condominium is proportional to the share of premises belonging to him/her.

To provide apartment house maintenance, use of apartments and common property of an apartment house houseowners choose a way of real property management by themselves. Such ways may be:

- direct unified management by all proprietors if their number does not exceed four;
- cooperative society of proprietors of premises (apartments);
- management of condominium object by third (exterior) physical (apartment house manager) or legal persons (office of rendering housing and operational services and utilities);
- other forms not contradicting the legislation of the Republic of Kazakhstan.

The decision about the choice of management way is made by the majority of votes of house owners present at general meeting or their representatives, is drawn up by the minutes and it is obligatory for all houseowners, including those who, irrespective of the reasons, did not take part in the voting. By the decision of houseowners the way of condo management can be changed at any time.

In Kazakhstan the most development has received creation of cooperative societies of proprietors of apartments (CPA) their efficiency of work is restrained by a number of objective and subjective factors:

- imperfection of normative base;
- insufficient support from local administrations, and sometimes direct opposition of bureaucratic structures;
- low awareness of the population and its low activity;
- financial and organizational mechanisms of budget grants distribution are not perfected enough.
- complexity of registration procedures;
- insufficient qualification of persons managing the real property, lack of wanted quantity of professionally trained management personnel;
- general housing market underdevelopment;
- lack of in the least bit wide spectrum of offers in the market of educational services concerning training of experts to manage available housing both as the chairman of CPA board and as entrepreneurial activity regarding real property management.



## **TOPIC 8. ACTIVITY KINDS IN THE REAL PROPERTY MARKET**

### **8.1 State regulation of land relations and its functions**

The state regulation of lands is subdivided into general and branch (departmental).

The general state regulation carried out by the state bodies of general as well as special competence, extends on all categories of lands and all subjects of land relations. The essential propositions of land relations are established by the current Constitution of the Republic of Kazakhstan. The branch (departmental) regulation of lands carried out by the ministries, committees and special services, is based on a principle of jurisdiction of enterprises and organisations possessing or using lands provided to them. Intraeconomic management is carried out by land proprietors, tenants and land users by the intraeconomic organisation and improvement of the parcel of land, the control over use and protection of the lands, management of the lands within borders of areas, cities and rural settlements carry out by elective local governments. Taking into account interests of the population they solve questions of possession, use and disposal of municipal property, define programs of development of territories, give and withdraw the parcels of land, carry out the state control over use and protection of the lands, organise works on land management. Land relations regulation is revealed via functions, each of which — isolated kind of activity with its special purpose and procedure. Goals and forms of the state regulation of land relations. State regulation of land relations is directed on the organisation of rational use and protection of the lands by an establishment of certain rules and norms of possession, use and disposal of land resources of the country and their separate parts with a view of strengthening and development of national economy in interests of the people. The republic of Kazakhstan has the right to regulate land relations because it possesses the sovereign government power over the whole territory of the country and is an executive power of the people.

#### *Functions of state regulation of lands.*

The basic functions of the state regulation of possession and use of supply of land are:

- planning and forecasting of lands use;
- lands zoning;
- distribution and redistribution of lands;
- keeping of state land cadastre;
- land management and intraeconomic organization of the land tenure;
- monitoring of the lands and the control over their correct use;
- settlement of land disputes.

Functions of regulation of land relations differ from each other by subjects (bodies) of their realisation, place and meaning in the system of regulation and by legal consequences.

The competence of Republican public authorities on regulation of land relations covers:

- the passage of the Land code of the RK and other Republican laws regulating land relations;

- establishment of single principles of payment for the land; establishment of procedure for registration of the rights to the land lots and other real estate strongly connected with them;

- approval of management order of the lands which are in the federal property;

- approval of organisation order of land management, keeping of the state land cadastre and monitoring of the lands, organisation and realisation of the state control over use and protection of the lands;

- control of execution of legislation of the RK, regulating land relations;

- establishment of borders of specially protected territories that are a part of several subjects of the RK, and also in places of residence and economic activity of small numbered peoples and ethnic groups, in coordination with corresponding public authorities and local governments;

- working out together with public authorities of subjects of the RK and the statement of republican programs concerning rational use of the lands, increase of fertility of soils, protection of land resources in combination with other nature protection measures;

- disposal of (seizure and provision) land lots that are in ownership of the Republic;

- redemption of lands for the state needs;

- approval of city boundaries of cities of republican value. The public authorities of subjects of the RK have wide powers on regulation of possession, use and disposal of the land. They are in charge of:

- passage of laws and other standard legal acts of subjects of the RK according to Constitution of the RK, the Land code, other republican laws;

- defining of territories with a special legal regime of use of lands, an establishment and change of their borders;

- establishment of limiting dimensions of land lots;

- establishment of sizes and order of payment for the land, and also establishment of the order of its centralisation according to legislative acts of the RK;

- approval of management order of the lands which are in the state

- property of the RK subjects as well as the order of purpose of land lot;

- approval of city and settlement boundaries, cities/towns and settlements of Republic, territorial, oblast, district subordination;

- approval of, in accordance with laws of the RK considering local conditions, the order of exercising of the state control over use and protection of the lands, land management;

- establishment of benefits regarding collection of land payment according to the Republican law;

- organization of keeping of state land cadastre, land management and monitoring of lands according to the order established by the legislation of the RK;

- organization of the state control over use and protection of the lands;

- disposal of (seizure and provision) land lots that are in ownership of the subjects of the RK;

- change of purpose of the lands;

- making decisions on seizure (repayment) of the lands for the state needs of the subjects of the RK;

The Republican body dealing with land resources and land management and its organisation on sites according to the law:

- they develop offers on lands management that are in the state and municipal property;

- suspend execution of wrongful decisions concerning seizure and provision of land lots before their consideration in corresponding bodies (administration, court, arbitration court), including: bodies on land resources and land management of subjects of the RK decisions of district and city local governments; regional, city bodies on land resources and land management

- decisions of rural and settlement local governments;

- bring to an administrative responsibility persons guilty of infringement of the land legislation of the RK;

- give by the established order permission (licence) to carry out land-utilization and other design and exploration works connected with studying and use of land resources;

- analyze the land market condition;

- make offers regarding the order of calculation of a standard land price, an order of establishment of the land tax rate and penalty provisions for infringement of the land legislation;

- organise and keep the state land cadastre;

- carry out land management, the state control over use and protection of the lands, give obligatory instructions for execution on elimination of the revealed infringements of the land legislation of the RK;

- monitor the lands;
- go to the law free of duty that is an arbitration court regarding the issues related to the competence of bodies dealing with land resources and land management.

*Protection of the land proprietor rights.*

In Kazakhstan all patterns of ownership of the land are equally protected. The land proprietor has the right to reclaim his area from another's illegal possession. He has reliable legislative guarantees in case of seizure of the area for state or social needs. Protection of the land rights is carried out in the administrative or judicial order — in courts of the general competence, in arbitration and reference tribunals.

- In the administrative order
- Settlement of land disputes.
- In the judicial order
- Filed applications by agreement between the parties
- Between the state enterprises located on territory of different subjects of the

RK

- By application or complaint from a citizen
- Decisions can be appealed in court
- Recovery of damages from the persons who have infringed a right.

*Land tax.*

The taxation object is a parcel of land. Taxable lands are:

- lands of agricultural purpose;
- lands of settlements;
- lands of the industry, transport, communication, defence and other purpose;
- lands of health-improving and recreational purpose;
- lands of forest resources;
- lands of water resources.

Payers of the land tax are the legal persons possessing or using land lots.

The land tax rate is defined depending on quality, locus and sufficiency of water supply of a land lot and does not depend on results of economic activity of the land owner and the land user.

The land tax is established in the form of the annual fixed payments for unit of the land lot.

Basic rates of the land tax for the agricultural purpose lands are established calculating on 1 hectare and differentiated by quality of soils.

Basic rates of the tax for lands of settlements are established per 1 square meter of area surface. Basic rates of the land tax are established in the Tax Code of the Republic of Kazakhstan.

## 8.2 Real estate agents' activity in the real property market

Lately in Kazakhstan a set of firms has emerged earning big money at the real property area. They are called real estate agents' firms. Basis of this kind of activity, that object with which realtors work, is the real property. The real estate agents' activity is the activity which is carried out by legal persons and individual entrepreneurs on the basis of the agreement with the interested person (or per procuration) on fulfilment, on behalf of him and at his expense or on one's own behalf, but for the account and in the interests of the interested person, of civil law transactions with parcels of land, constructions, works, structures, inhabited and uninhabited premises and the rights to them.

The list of kinds of real estate agents' activity, liable to licensing, following operations includes:

- sale of both housing and nonresidential premises by auctions and on a competitive basis;
- activity at fulfilment of transactions of purchase and sale, feoffment, exchange, barter of housing and nonresidential premises (including intermediary too), on exchanges of a communal flat for several so that each family may have one of its own, moving out of inhabitants of houses that are subject to reconstruction;
- activity (including intermediary) on lease of both inhabited and uninhabited premises which are in ownership of legal as well as physical persons;
- conclusion of sales contracts of housing premises with permanent alimony;
- activity (including intermediary) on lease of land lots which are in ownership of legal as well as physical persons.

Real estate agents can be physical and commercial legal persons in the form of economic associations, production cooperatives and government enterprises.

The citizen has the right to be engaged in realtor activity in case s/he is:

- legally capable, i.e. has reached the age of 18 years or recognised by the guardianship and trusteeship body completely capable at the age of 16;
- registered as an individual entrepreneur with a legal person formation;
- trained at special courses, has received the resolution about qualifying conformity and the state licence for pursuit of one or another kind of realtor activity.

It is necessary to notice, that modern Kazakhstan realtor firms by no means «obsessed with» intermediary services - they, at their own expense buy and sell the real property, lease belonging to them housing and uninhabited premises and buildings too and perform other various operations as any legal person has the right to do it.

Nowadays these firms mostly are engaged in real estate purchase and sale, its exchange, lease and rent, rendering of intermediary services in transactions with the

real property, provision of paid and free consultations in this sphere, provision of several flats to separate tenants living in one communal flat, an expert evaluation of variants (exchange, transactions of purchase and sale and so on), legal check of the real property. Besides, realtor companies also can render services for organisation of monetary settlements while concluding agreements with the real property, make real estate estimation. Though, for the latter kind of activity - estimation - it is necessary for them to receive a separate licence. A realtor activity is considered as one of the most profitable ones all over the world. It is connected, first of all, with the fact that the remuneration paid to real estate agents at fulfillment of transactions, fluctuates within the limits of 5-7 %, and sometimes even more. As a result considering far from low cost of the real property objects it makes up rather decent sum of money. In the West - ten and hundred thousand dollars, in our country - less, but not much more. Everybody knows, that in the RK the real property objects, including residential one - cottages, detached houses, sports complexes, chic office premises, - costing hundred thousand dollars began to emerge lately. Certainly, the market of such objects is limited enough: the small number of citizens is capable and wishes to buy such real estate; nevertheless, many realtor offices work in this market rather successfully. Such real estate is by no means the single object of real estate agents' activity, there are others too, and at that it is they that bring in the main profit of realtor offices. The question is about city residential real estate market: flats and rooms. The housing problem has been existing in Kazakhstan since the planned economics times and it has become aggravated from the beginning of the 90s of the last century when the state capital investments in the construction of housing was suspended, especially sharply shows itself in large cities such as Almaty, Astana and Shymkent. This is explainable.

First, the population size of these cities steadily grows, first of all, owing to migration from rural areas. We have such a situation because of deterioration of an economic situation and loss of workplaces in the rural area. Result: one of essential subjects in the market of the inhabited real estate - forced settlers, migrants.

Second, bad provision of cities with hotel services tells on it too: in Almaty, Astana (it is true for other cities of the RK as well) there are some magnificent hotels, but their prices, compared with conventional ones, are exorbitant. There are plainer hotels too but neither the service level nor «bandit» contingent which is ordinary for such establishments, and the prices do not suit a common visitor of capital either. Therefore, many newcomers and natives too, experiencing housing difficulties, prefer to rent apartments and rooms. Finally it turns out both cheaper and better. At that it is better not only for them since the housing rent market - is also a field of activity for realtor firms where it is possible to earn quite some money.

Thirdly, while speaking about housing, one cannot ignore a number of important social peculiarities. As housing, namely apartment, is the only valuable thing that has still remained at the majority of distressful Kazakhstan citizens at the end of the XX<sup>th</sup> century. One's own flat - object of longing and even the life goal of many Kazakhstan citizens of the older generation. Unfortunately, in due course the situation has not changed very much: time goes by, but the housing problem remains.

The flat in Kazakhstan, Almaty, Astana is the object being in a constant and steady demand. People are ready to commit crimes, at times grave ones, to get it. People do their best to face-lift apartments, to improve living conditions, namely: gather, separate, exchange.

In a word, the flat is an inexhaustible source of the income for the realtor.

*Realtor activity licencing.*

Licensing - one of the forms of state regulation of enterprise activity and real estate sphere. In the legal respect licensing is restriction of the general legal capacity of a commercial organisation or an individual entrepreneur. To occupy oneself with licensed kind of activity an entrepreneur has meet certain requirements established by the state as represented by the authorised body in order to protect vital interests of the person, society and the state.

The licence confer a right to carry out as enterprise activity following kinds of realtor activity:

- a) intermediary in transactions of purchase, sale, swap, rent of the real property;
- b) the real property management by the agreement with the proprietor of this property,
- c) conclusion of lease contracts as well as ones of permanent alimony with dependence providing for the real property alienation.

To carry out every kind of realtor activity a separate licence is issued. Together with a licence the licensee — legal person is given the set of registered licence cards for the experts managing the real estate, brokers and agents providing kinds of activity and services specified in the licence.

A registered licence card of a broker or an expert managing the real property is obligatory for:

- head of the legal person or his deputy;
- head of a specialised realtor division of the legal person;
- all experts directly managing the real estate or directly working with clients (brokers) on behalf of a legal person or an individual entrepreneur when effecting civil law transactions with the real property.

A broker licence card is given only to experts or individual businessmen having labour experience as an agent or carrying out broker activity for at least two years.

All employees of the legal person directly working with clients and participating in preparation for the conclusion of contracts with clients on realisation of civil law transactions with the real estate are obliged to have a registered agent licence card.

To obtain the licence the applicant submits to the licence chamber:

- a) application for the license issue (by the established form) where one specifies:
  - for the legal person - name and an organizational and legal form, a legal address, a settlement account number and a corresponding bank name;
  - for an individual entrepreneur - surname, a name, a patronymic, passport data (series, number, who and when it is issued), place of residence;
  - individual identification number (IIN);
  - declared kind of realtor activity with decoding of kinds of works;
  - duration of a license;
- b) copies of founding documents (if they are not attested by a notary - along with submission of originals);
- c) copy of the state registration certificate of a legal person or an individual entrepreneur (if it is not attested by a notary - together with submission of the original);
- d) tax body reference about registration (except cases when the note of registration at the tax inspection attested by the established order is made on the certificate of registry) or the certificate of state registration of the physical person as an individual businessman with the tax body stamp along with the RTN;
- e) information on earlier obtained licences of the right to carry out the realtor activity;
- f) qualification inference, confirming that experts providing the realtor activity have knowledge and experience of work in such an area, is given by:
  - Committee of municipal housing - regarding operations with residential premises;
  - Committee of property management - regarding operations with nonresidential premises;
  - Land committee - regarding operations with parcels of land;
  - Committee of social protection of population to obtain a licence for carrying out of activity dealing with conclusion of lease contracts as well as ones of permanent alimony with dependence providing for the real property alienation;
- g) insurance policy copy on insurance of realtor liability insurance given out by an insurance organisation according to the Law of the RK «About the insurance activity»;
- h) document confirming payment of consideration of the application.

The decision on licensing or on refusal of licensing is made by licence body with account of the council of experts' report created under the licence body.



Licensing can be refused only in cases, if:

- the documents submitted by the licensee contain an inadequate or a distorted information;
- applicant does not meet qualifying or other requirements made of the licensee (negative expert opinion).

The motivated decision of the licence body about refusal to issue the licence is sent to the applicant in a written form within three days period after it has been made and can be appealed according to the established order. The licence, licence cards are given only after submitting to the licence body the document confirming entering of a payment for licensing, and receipt of means to the settlement account of the licence body. They are not subject to transfer to another person, their force does not cover other persons carrying out activity together with the licensee, including under the cooperation contract, as well as legal bodies when the licensee is one of the founders. Temporary granting of licences to other person to perform actions on behalf of the licence holder on the basis of the labour agreement (contract) or the agency contract is not considered the licence transfer. When an employee of the legal person is dismissed who has a registered licence card, the licensee should notify about it in writing the licence body that has issued the licence within 10 days. For senior executives who newly got a job, new licence cards should be obtained. To get them the licensee submits to the licensee body a corresponding application with attachment of information about senior executives and resolutions that they meet the established qualifying requirements.

The licensee is obliged to observe legislative and other normative acts of the Republic and a city, to carry out decisions of the licence chamber and the licence body, directions of control and supervising bodies.

*The licensee has to:*

- observe norms and rules regulating carrying out of a licensed kind of activity;
- meet the conditions of carrying out of a licensed kind of activity;
- have among employees of the legal person experts having necessary, for carrying out a licensed kind of activity, educational level, vocational training and qualification and who were certified by the established order;
- show a licence, a licence copy, a licence card at the first request of clients and controlling units;
- ensure that senior executives (brokers, agents, experts managing the real property) have licence cards while carrying out of a licensed kind of activity;
- inform the interested person on requirements of the standard legal acts regulating the relations in sphere of the real estate, and also on all data concerning the real estate object being a transaction object and the rights to it which are known or

should be known to the real estate agent, without misrepresentation or concealment of data;

- refuse to: carry out transactions with the real estate or the rights to the real estate when there is a different interest of the licensee, apart from payment for services. The different interest of the licensee is equal to the interest of persons able to exert direct impact on his activity or activity of the organisation represented by the real estate agent;

- not allowing actions on behalf of and on the instructions of more than one party of the transaction without informing all parties about work for other persons;

- include in the contract of rendering realtor services the clause about real estate agent's liability insurance with name, address and the details of the guarantor organisation being specified;

- before signing of the contract on rendering realtor services to read out the client all clauses of the contract and to explain them;

- to ensure, that financial and other obligations under the transaction with the real estate and the rights to it were made up in writing and were registered in accordance with norms of the Civil code of the RK, reflected more precisely the will of the parties, each of the contract parties receives a contract copy;

- ensure professional level of services and protection of client's interests;

The licensee is obliged to inform the client that the client has the right to demand inclusion in the contract on rendering realtor services of the the licensee's liabilities:

- to provide the state registration of the transaction, its notarial authentication if there is the obligation of such an authentication by the law;

- certify by documents the fact of the disposal of property, being a transaction subject (the reception-transfer certificate) which copies remain with the parties participating in the transaction. The licensee does not have the right to act as the appraiser of the real estate while carrying out transactions in which he takes part as the real estate agent. The licensee and the owner of a licence card have the right to receive the necessary information on the real estate and its proprietors in the state and municipal governing bodies, state and municipal authorities at the conclusion of the contract with the client about rendering of realtor services. The licence body has the right to suspend or cancel a licence, a licence copy, a licence card in cases:

- receipt of the appropriate application from the licence holder;

- detection of inadequate or distorted data in the documents submitted by the licensee while getting a licence, a licence copy, a licence card;

- non-execution by the licensee of directions or instructions of the state controlling, supervising and other bodies or suspension by them of activity of legal person or individual entrepreneur according to the legislation of the Republic, city;

- groundless refusal of licensee to submit necessary documents, requested by control bodies in order of control over the observance of licensed conditions and demands, as well as the creation of obstacles for control bodies to carry out checkup;
- receipt of reports of government control, supervising, law-enforcement, tax and other bodies, including licence bodies of other subjects of the Russian Federation about infringements of norms and rules regulating carrying out of the licensed kind of activity;
- infringement by the licensee of obligatory services and requirements established by the statute about licensing;
- absence among employees of the legal person experts having license cards;
- one does not put in an application, within the established terms, for his licence reissued or to get the licence duplicate, a licence copy, a licence card in the cases provided by the Statute;
- withdrawal of resolution about conformity of the licensee to qualifying requirements to carry out a licensed kind of activity;
- withdrawal of an insurance contract or the termination of its term;
- transfer of the confidential information to the third parties without the appropriate permission of the client;
- receipt of justified complaints of citizens on actions of the licensee contradicting the legislation in the course of carrying out of a licensed kind of activity;
- transfer of a licence, a licence copy, a licence card to another legal or physical person. In case of liquidation of the legal person or determination of the state registration certificate of an individual entrepreneur, the licence body cancels licences, licence copies and licence cards granted to him.

### **8.3 Development activity in the real property market**

If for years when the real property market was emerging in Kazakhstan «realtor, realtor activity» terms became habitual and citizens understand them quite consciously, then after having heard «development activity» term the majority shrug their shoulders. However in the western real property market such an activity exists and it is rather prestigious and profitable as it demands still more capital investments, than just investment in the real estate. In my opinion, it is time to bring these terms into common use on the Kazakhstan real property market, moreover elements of this activity have being used in our market for a long time, for example, conversion of residential premises into the uninhabited ones. Therefore we will consider the meaning of these terms and content of development activity at greater length.

In the literature the development concept is quite often associated with construction processes that have partly a right to exist, however only in the sense that construction is connected with qualitative real estate transformations. But it does not mean at all, that between them it is possible to put an equals sign. In the Dictionary of Real Estate (published in 1993 in London) one gives the following explanation of «development» term; «Development as it is defined in the Town and Country Planning Act 1971 — the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Definition through these operations is exclusive for "development" concept definition, not including work on improvement of the internal interior, not changing an external appearance of a building». As one can see from this definition, development here is connected with making some material changes in the real property objects, with transformation of «underdeveloped» real estate object into «developed» one. As a starting point such definition is, in our opinion, quite successful, though it is necessary to make one rather important addition to it — development as a qualitative transformation of the real estate object has the purpose of increasing its value. Thus, as a whole it is possible to make following definition of development: «Development - such material transformations in the real estate object that ensure its transformation into another, new object costing higher, than an original object». At the same time this definition reflects only one side of the problem. However there is a different aspect of «development» concept. Under market conditions development is also a special kind of enterprise activity, special manifestation of business activity on the market. And in this capacity «development» concept is inherently connected with its derivative term "developer" which interpretation causes no less difficulty. The developer is a businessman in the real estate market, engaged in transformation of undeveloped area into the functioning real estate». Such definition is, of course, better, than nothing, but it does not add clearness, especially as it is very often further one lumps everything, that is anyhow connected (or is not connected) with the real estate and construction, together «by creation of roads, engineering structures, buildings, carrying out of landscape measures, financing, assistance and other creative actions».

So what do functions of the developer still include: creation of roads? Carrying out of landscape measures? Financing of anything? Or «other creative actions»? In a word, the idea about what is «developer» remains rather obscure, let alone that in some works to the mentioned functions they even add those of a contractor.

So still who is a developer? In the dictionary mentioned above we can find such definition: «Developer - an entrepreneur initiating and providing implementation of the best of possible variants of the real estate development, organisation of project financing included».

It is possible to acknowledge this definition quite sufficient to single out the main thing of developer activity - search and implementation of the best variant of the real estate development though giving only the most general idea about development as a professional business, it, certainly, requires decoding.

The «development» concept as it was already mentioned above has two interrelated meanings:

1. Development - a qualitative transformation of the real estate ensuring the increase of its cost.

2. Development - professional activity for the organisation of development processes.

As qualitative real property transformation the development is the unity of physical, economic and legal processes.

Any development of real property object is connected with physical changes that provide occurrence of new consumer qualities of the object corresponding to changing requirements of a society. These changes can be cardinal (transformation of undeveloped site of land into a site with a building), can be not so noticeable outwardly (as it is when transferring an object from one functional use into another, for example, from available housing into «uninhabited»), but they are always present, being a necessary development sign, a necessary condition for increase of economic effect from the object use.

In the conditions of the modern economy distinguishing by dynamism of processes, the important characteristic of physical potential of the real estate objects is their ability to self-development, transition from one kind of use to another. Because of it requirements to space-and-planning solutions that should provide possibility of transformation of internal space of buildings, allowing changing a variant of their use - from a sales area to a number of offices, from them to a hall for conferences and so forth.

The development economic aspect is implemented in the increase of the real estate object value owing to the performed physical changes. At that, physical changes themselves are not argument yet in favour of the object value increase - they entail change of the object value just in so far as they provide occurrence of the object possessing consumer qualities, making this object in demand on the market. Thus, value growth is ensured not by any physical transformations, and such which correspond to market requirements, to inquiries of consumers. The more this correspondence, the higher value of created object, the higher the development efficiency.

It is that that essential for development understanding - the increment of object value is ensured, first of all, not when construction is performed, and then when the development variant is chosen.

The development legal aspect is connected with legal registration of the made changes, occurrence of qualitatively new object of the real estate possessing higher value, than initial one. Registration of newly created object and the rights to it is essentially important point as only after that it is possible to speak about development process completion.

As an example it is possible to specify such version of development of the real estate as transfer of premises from available housing to uninhabited one. He deserves that that one dwells at length on it. In the 90s of the XX<sup>th</sup> century in many cities of Kazakhstan especially capital, this transfer - one of the most popular operations in the real estate market. In the popular consciousness of even professional participants of the real estate market it is seldom related to «development» concept, and meanwhile it is just so: such a transfer assumes amending of physical characteristics of the real estate, it means change of a functional purpose of the real estate, so, occurrence of new object of the real estate in demand by the market. It is common knowledge that the transfer process of objects from available housing to uninhabited up to the present moment entails rather long and complex procedures. It is partly connected with that that objects related to the commercial real estate, really should meet certain requirements from the point of view of fire-prevention, sanitary safety and so forth. Difficulties of the transfer are also largely connected with reasons of social nature, for example misgiving, that such kind of transfer can reduce city available housing. However, it is important to understand, that it is possible to forbid legalisation of such transfer for the definite person, but it is impossible to forbid the objective processes inherent in the market. And it is such objective process that we deal with in this case — in essence the transfer of objects from available housing to uninhabited is the transfer process of these objects from one, inefficient variant of use, to another, being for the given market «the best and the most effective». As is known, mass character of transfer processes of the real estate objects from available housing to the uninhabited is characteristic, first of all, for downtowns. In essence it is the mechanism by means of which in concrete conditions of the Kazakhstan market there is a reconstruction of that that in the urban economics they used to call «central business district» (CBD) - the central part of a city in which business activity concentrates. Under conditions of planned economy this phenomenon has lost its importance, and with transition to market economy it gains strength again, recovers through mechanisms of such transfer included.

As one can see from this excursus to the problem of transfer of objects from available housing to uninhabited, the development represents the real estate market reaction to the requirements arising in a society which satisfaction is impossible without transformation of available housing. This transformation can take various forms but its directivity will always be set by changing social requirements: the real

estate market will adapt to a new social and economic situation, search for the best, from its point of view, variants of use of the real estate.

The development is way of the solution of the contradiction between changing and increasing requirements of a society for the services rendered with the use of the real property on the one hand, and existent qualitative and quantitative characteristics of the real property - on the other. By changing the conditions of economic and social activity of a society, the development is a component of the general process of economic development, taking an appreciable place in an economic complex of any country. According to estimations of the American experts, new construction made up at different historical periods 8-11 percent of gross domestic product of the USA, and in the investment portfolio the real estate share yielded only to the share of corporate stocks and reached almost 30 percent.

Acting as the most important direction of real investments, realisation of development projects is not only the way of multiplication of the proprietor wealth or a source for acquisition of income by the developer and investors, but also exerts actual impact on economic processes, budget incomes, social relations.

*The developer and his functions.*

Owing to physical characteristics of the real estate (limitation of land lots suitable for development, stationarity, uniqueness, technical complexity of the real estate objects), high dependence of the real estate market on a regional economy condition, high cost of the real estate objects these projects differ by a number of characteristics which make them rather «problem» from the point of view of financing and organisation. These characteristics proper define, finally, the need for a developer as a central figure in the organisation of development processes of the real estate.

The most essential characteristics of projects of the real property development include: projects on the real estate development demand investment of considerable means comparable by their sizes with scales of all property of initiators and participants of the project, and, hence, can be implemented only under condition of attraction of external investment.

Even for construction of such rather insignificant by their sizes the real estate objects as, for example, apartment houses in the Almaty conditions investments starting from approximately \$1 million is required. Creation of business centres, shopping centres assumes investments of tens of millions dollars, and projects on development of territories are impossible without the investments yet amounting to hundreds of millions and even more. For example, the project on development of territories of Chimbulak mountain resort (vicinity of Almaty) with sports facilities by predesigns may be priced as much as \$1, 5 billion.

For development projects a high level of «externalities» is characteristic, their realisation touches upon interests of many participants of economic activity and population, changing conditions of passing of economic and social processes on the territory that predetermines a high level of the state control over the real estate developments.

In many countries to designate this phenomenon they use «nationalisation of the right to the real estate development» concept, meaning that the proprietor of the land lot or a building cannot transform the real estate object into another one without the state structures permission. The same system, but more complex and imperfect, exists in the Kazakhstan conditions so that without close contact with state coordinating, control and other bodies while realising of projects of the real estate development one simply cannot get along.

The success of development projects is defined in large measures by that, how much they fit in a context of social and economic development of a region, meet the requirements of potential users, are competitive in relation to other projects. To achieve such harmonisation of the project and an environment (both near and distant environment) it is possible only due to constant studying of regional economy and regional real property market.

From all aforesaid it is simple to make a generalising conclusion: realisation of investment projects on real estate development is connected with diverse risks, their success depends on professionalism of the approach to solution of such problems as a choice of location and characteristics of the real estate object being created, attraction of financial resources, organisation of the project realisation process.

It is obvious, that success achievement is possible under these conditions only if the development is separated as a special kind of professional and enterprise activity.

Thus, the development as process of a qualitative transformation of the real estate according to the requirements dictated by development of economy and social sphere, inseparably linked with the development as professional activity, with activity of the developer.

In our opinion this most precisely this is rendered by following definition:

«Developer - entrepreneur initiating and organizing realisation of projects of the real estate development».

As well as any definition, this one does not include all aspects of activity of the developer, but it distinguishes the main thing in it: the initiative and organizing beginning — it is that that distinguishes the developer from among other participants of the real estate development.

The leading part of the developer is well visible yet while enumerating those functions that he performs in the course of realisation of development projects:

- search and selection of economically (commercially) efficient project;



- provision of legal possibilities for its realisation;
- getting of permissions and endorsements of the project from public authorities;
- working out of mechanisms of financing of the project and return of involved resources, search and attraction of investors;
- search and selection of contractors, financing of their activity and control over their work;
- sale of the created real estate object or its transfer to operation;
- return of investors' means according to concluded agreements.

## **TOPIC 9. TAXATION AND INSURANCE OF THE REAL PROPERTY**

The establishment of taxes and the general tax treatment in the RK is in the competence of representative (legislative) authorities, which delegate some authority (mostly regarding procedural matters) to executive tax bodies.

Thus, tax legislation is composed of legislative acts of both a regional (subjects) and a local (local governments) levels and are supplemented with by-laws of executive tax bodies (the State tax inspection, the Ministry of Finance, etc.). Nowadays tax legislation and enforcement practice in the RK are in condition of a dynamical change.

Since 2003 there is a new Tax Code of the RK, - in the near future a considerable quantity of base laws, obviously will be changed and/or cancelled.

Because of it in the present chapter the basic categories of taxes, in this or that kind constantly operating in the sphere of the real estate and accounted in activity of the real estate manager will be considered.

In Kazakhstan taxes, dues and payments form the tax system. Besides, there are some kinds of obligatory nontax payments which unlike taxes, are directed not to the budget, and to special off-budget funds.

Taxes are the common economic standards acting irrespective of desires and will of legal and physical persons. Everybody is equal before the tax.

First of all, it is necessary to distinguish two large categories of taxes:

- real estate taxes as on property, i.e. those taxes which are paid periodically for a long time period and are included in a strategic (long-term) planning of the manager's economic activity;

- taxes on operations with the real estate which are paid one-time for each separate operation and are included in a tactical (medium-term) planning of the manager's economic activity.

Real estate taxes as on property include:

- property tax for individuals;
- property tax for enterprises;
- land tax.

Taxes on operations with the real estate include:

- profit tax of enterprises and organisations;
- individual income tax;
- tax on the property passing as inheritance and donation;
- value-added tax.

Definition of a taxable cost is made in the economic and political environment where simultaneously operate both state and a private sector. The real estate experts

have to be well up in fiscal and monetary activity that changes a tax policy and also to trace tendencies of development of land tenure and activity of participants of the real estate market regarding developing new parcels of land.

### **9.1 Property tax for individuals**

According to the given tax the taxation objects are apartment houses, flats, garages and other structures, premises and works being in ownership of natural persons. Tax payers are citizens of the RK, foreign citizens and stateless persons, possessing the mentioned real estate on the territory of Kazakhstan.

The given tax is estimated by the tax body on the location (registration) of the taxation objects. Employees of tax bodies write out tax notices that are handed over to tax payers. If the physical person does not reside where the real estate is located a payment notice discharge the calculated tax is directed to a domiciliary tax body of the physical person for tax collection. The given tax is paid irrespective of, whether a taxable property is in operation or not.

Categories of citizens who are exempted from the given tax may be stipulated by the legislation. So, at the present time such persons are disabled persons of I and II groups, persons with childhood disability, Second World War veteran, the citizens who have received or have had radiation sickness and other diseases, connected with radiation exposure owing to the Chernobyl disaster, the citizens who have become disabled persons owing to the Chernobyl disaster etc.

Nowadays law-making bodies of area and local government of districts, cities (except cities of regional subordination), districts in cities have the right to reduce the sizes of rates and to establish tax fringes both for categories of payers and for individual payers. City (cities of regional subordination), settlement, rural local governments may grant tax benefits only to individual payers.

The citizens, having the right to the benefits, should prove this right by necessary documents.

Currently the tax on dwelling houses, flats, summer cottages, garages and other structures, premises and works is paid annually by the rate established by the representative power bodies of subjects of the RK amounting to, not more than 0, 1 percent of their inventory cost and in case it was not defined, - of the cost of these real estate objects defined by compulsory insurance proceeding from the estimation as of January 1st of each year.

The bodies, estimating buildings, premises and constructions, are obliged on request of tax bodies to submit the data necessary for calculation of the given tax,

within the time period established by tax bodies. These data are given to tax bodies free of charge.

At transition of the property right to a dwelling house, an apartment, a summer cottage, a garage from one proprietor to another one within a year a new proprietor becomes a tax payer beginning from a month when such right of property ownership has accrued.

On structures, premises and constructions newly built by citizens the tax is paid from the beginning of the year following their erection. Unauthorized construction, objects not accepted for operation, but operated for an indefinite purpose cannot be taxation objects. From mala fide owners, according to the administrative legislation, fines are exacted. In case of destruction (complete destruction) of taxable structure, premise, construction tax collection is suspended, beginning from a month when the real estate object was destroyed, or completely destroyed.

The tax is not collected for structures, premises and works without the proprietor or whose proprietor is unknown, and also for the real estate objects registered as unowned by tax bodies.

When a flat, a summer cottage, a dwelling house, a garage or another structure, premise have passed by right of succession, the tax is collected from heirs from the moment of inheritance opening.

If a dwelling house, a flat, a summer cottage, a garage and another structure, premise are in joint ownership of several people, tax payments are presented to each of proprietors depending on their share in the right of ownership of this property. When the property is in common ownership (i.e. the right of each of proprietors covers the property as a whole and proprietors have no certain share in this right), tax payments are estimated proceeding from the agreement of all proprietors in equal shares.

Nowadays calculation of property taxes for individuals is made by tax bodies that hand over to citizens some payment notices on payment of the mentioned taxes not later than August, 1. The taxes are paid by equal parts for two periods — not later than September, 15 and November, 15. According to payer's choice the tax can be paid in the full sum on the first due date, that is not later than September, 15. Citizens who in due time have not been involved in tax payment; pay it no more than for three previous years. Revision of incorrectly made taxation is allowed for the same time period.

#### *Property tax for enterprises.*

Currently property tax for enterprise, including immovables, is charged by the rate, this is established by law-making bodies of the subjects of the RK depending on a kind of activity of an enterprise amounting to no more than 2 percent of the taxable base. To determine the taxable base it is necessary to reduce the property average

annual cost by the book (standard) land value and other objects and property kinds, whose list has been established by the Decree of the President of 24.04.95 «About the property tax for enterprises».

*Taxes on operations with the real estate. Profit tax of enterprises and organisations.*

Nowadays at fulfillment of transactions of purchase and sale, of lease, of transfer into the entrusted administration and other compensated transactions with the real estate legal persons pay taxes according to the Law of the RK «About the profit tax of enterprises and organizations». This kind of the taxation is especially subject to changes therefore both enterprises and organizations have to use, in their activity, the services of qualified bookkeepers and auditors. Nevertheless in a practical activity of the real estate manager it is important to know, that in this or that kind the incomes received from operations (transactions) with the real estate, always will be the object of taxation.

## **9.2 Individual income tax**

Currently at fulfillment of compensated transactions (purchase and sale, lease etc.) citizens (individuals) receiving the income from such an operation, pay the tax according to the Law of the RK «About the individual income tax» with additions and amendments. This kind of taxation is subject to considerable changes too, often within one fiscal year, nevertheless, as in this or that kind it will always exist, we will consider the main principles efficient at the present time.

By the general rule the total annual income of citizens is subject to taxation. At that «...the taxable total annual income of citizens includes the sum exceeding the minimum monthly wage, established by the law, at the fifty-fold». The size of the minimum non-taxable total income may vary, as well as a principle of this minimum calculation since a calculation unit currently used — the minimum monthly wage — can be replaced.

Nowadays, if citizens sell parcels of land (or land shares) to legal persons, the tax is estimated by the buyer. If citizens act as buyers of land lots (or land shares) the tax is estimated by tax bodies. At that the payment notice is handed over to the seller of a land lot or a share. At the end of a year such citizens have to present the declaration on actually received incomes to tax inspections on a permanent address.

The bodies authorised to certify transactions of purchase and sale of land lots or land shares are obliged to inform tax inspections on fulfilment of such agreements. While purchasing of housing the total taxable income of the citizen should be reduced by the sum of expenses on its acquisition. For this purpose it is necessary to present

to tax inspection the declaration on the incomes received during accounting year and the application with request for granting of income tax benefit. The documents, confirming expenses incurred on purchase of housing, are attached to the application. The available housing being in ownership of the legal persons acting as private proprietors, including housing construction cooperatives, is a private available housing. Therefore in case of acquisition of apartments at the expense of means of such legal bodies the apartments become the property of these persons. If further the apartments are transferred into the ownership of employees then their cost are included in the total taxable income of these employees. The natural person, who has received apartment from the enterprise as a gift, has to pay the tax on the property passing as inheritance or donation. Besides, cost of the flat presented has to be included in the total taxable income of the citizen from which the income tax is estimated.

*Tax on the property passing as inheritance or donation.*

The tax, from the property inherited or transferred by the donor without compensation, is paid by physical persons who receive the property passing into their ownership as inheritance or donation.

Taxation objects are inhabited apartments, summer cottages, garden cabins on the areas of gardening associations and another real estate.

The tax, on the property passing as inheritance or donation, is collected:

- from the cost of land lots or land shares passing into ownership of citizens as inheritance or donation provided that their cost at registration of the right of succession at the 850-fold more than efficient minimum monthly wage at the moment of the opening of inheritance:

- at registration of the deed of a gift

- provided that cost at the 80-fold more than efficient minimum monthly wage at the moment of fulfillment of the transaction of donation.

Tax inspections, on the basis of the data presented to them by bodies, authorised to certify the specified transactions, estimate for citizens the tax on the property passing as inheritance or donation, write out and hand over payment notices on tax payment.

Currently if the property passes into the ownership of individuals living on the territory of the RK, then notaries, and also other bodies, authorised to make notarial actions, are obliged within 15 days from the moment of issue of the certificate of the right to inheritance or certificate of the deed of a gift, to send to the tax body on the location of the property or the notarial body a certificate on the property cost passing into the ownership of citizens as inheritance or donation.

When the property passes into the ownership of individuals living outside of the RK a certificate on the property cost has to be sent within the period of registration of the proprietary right to this property.

The tax on the property, passing to individuals as donation, is estimated by independent rates.

Nowadays, there are some cases when they are exempted from paying the tax on the property passing as inheritance or donation. Such cases are:

- property passing as inheritance to a spouse, surviving the other one, or as donation from one spouse to the other;
- dwelling houses, apartments, if heirs (presentees) resided in these houses, apartments together with a testator (donor) on the day of inheritance opening or of registration of the deed of a gift;
- property of persons who perished defending the USSR and the RK because of performance by them of the state or social obligations or as a result of performance of a citizen's duty of the RK to rescue a human life, to protect the state ownership and law and order;
- dwelling houses passing as inheritance to disabled persons of I and II group.

The evaluation of a dwelling house, of an apartment, of a summer cottage and of a garden cabin passing as inheritance or donation, is made by Real Estate Centers (REC) or by insurance organisations.

In cases when the property as donation passes into the ownership of the physical person from the same individual repeatedly within a year, the tax is estimated from the total cost of property on the basis of all notarially certified contracts. The payer pays the tax on the basis of the payment notice handed over to him by the tax body. The individuals living in Kazakhstan pay the tax not later than three months from the date of reception of the payment notice by them.

If necessary tax bodies may grant the right to pay the tax by installments or a delay of payment to payers by their written application, but no more than for two years, with interest payment amounting to the rate on the fixed deposits, operating in the Savings Bank.

The individuals living outside of the RK have to pay the tax before receiving the document certifying the ownership right to the property. It is forbidden to give out such a document to these persons without presenting the receipt on tax payment. The inherited property and the one passed as donation can be sold, granted, swapped by a new proprietor after he has paid the tax that is proved by the tax body certificate.

Value-added tax.

Value-added tax is collected from legal bodies irrespective of form of property.

This tax is collected from sale turnover of products, executed works and rendered services on the territory of Kazakhstan. The value-added tax rate is

currently established at 16 percent of taxable turnover of goods, works and services sold.

Taxable services are: lease of real property, intermediary (including those of the realtor), housing and others. The value-added tax is not paid, when working and residential premises are leased to foreign citizens and legal persons accredited in the RK and at that in these cases when their national legislation establishes a similar benefit concerning citizens and legal bodies of the RK, or this benefit is stipulated in international contracts.

### **9.3 The general principles of the real property insurance**

For the manager the insurance is the way to retain the real estate cost entrusted to him.

To cover the provided decline in value the manager can create within the frameworks of long-term planning reserve and depreciation funds, whereas insurance — way to restore cost of own real estate when it has happened owing to events possible, but the onset moment of which cannot be planned. So, estimated age of a residential building (i.e. time period from construction till pulling down or reconstruction) amounts to tens, as a rule, 30-50 years during which the proprietor or the manager have possibility to create a depreciation fund, sufficient for construction of a new or reconstruction of an old building. But if the need for reconstruction emerges as a result of a natural disaster, for example, a whirlwind or an earthquake, the major possible source of covering of necessary expenses are means received under the contract of insurance against these cases.

The list of circumstances, against which onset the real estate (insured events) is traditionally insured, includes the effects of following factors: earthquakes, landslips, landslides, storms, hurricanes, flood, hail, a downpour, inundations, fires, explosions, soil subsidence, frosts and snowfalls (unusual to the given area), action of subsoil waters, thunderbolts, technical accidents (including of vehicles), anthropogenic failures and calamity (industrial pollution included), penetration of water from the adjacent premise, damage of property by water from plumbing and sewer and fire control systems, wrongful acts of the third parties, burglary.

This list is neither exhaustive nor standardised, therefore each owner (manager) of the real estate chooses for himself those insured events against which he wishes to be insured; he also can suggest to an insurance company to insure his property against an insured event offered by him. As a rule, insurers have reasonable tariffs for those insured events, to be insured against, they offer by themselves. The request to



insure against new insured risks often leads to the requirement of the insurer to pay unreasonably high insurance fees.

It is important too that the insured risks listed above - everyday terms which interpretation should be coordinated by the parties of a contract of property insurance. Often each of insurers develops own definition of a concrete insured event because of it their description may not coincide at various insurers, and the volume of insurance protection against the same risk, given by the different insurance companies, accordingly, may be different.

Associations of insurers and bodies of government insurance supervision are engaged in unification of definition of traditional insured risks.

In Kazakhstan insurance is an independent branch of the civil legislation and is regulated by a special law, nowadays - Law «About insurance activities in the RK».

Real estate insurance is carried out on the basis of the contract of property insurance which is concluded by the citizen or the legal body (insured) with the insurance organisation (insurer).

As insurers the legal persons created for realisation of insurance activities (insurance organisations and mutual insurance societies) and having the licence for realisation of insurance of a corresponding kind. It is forbidden to insurance organisations to be engaged in an industrial, trade intermediary and bank activity.

The contract of property insurance represents the agreement between the insured and the insurer on the strength of which the insurer undertakes, at onset of the event provided in the contract (an insured event), to compensate to the insured or a different person, in favour of whom the contract (beneficiary) is concluded, losses in the insured property caused owing to this event within the sum defined by the contract (insurance payment). In turn, the insured undertakes to pay insurance fees (insurance premiums) for a given period.

Non-occurred event, against which consequences insurance is carried out, is called an insured event.

The insurance contract should answer the general conditions of transaction validity, stipulated by the civil legislation of the RK.

Essential provisions of property insurance contract, the parties are obliged to agree about, are:

- about the certain property being the object of insurance;
- about character of an event, in which onset, insurance is carried out (a contingency);
- about the insurance payment sum;
- about the duration of treaty.

In practice the conclusion of the insurance contract is frequently certified by the transferred by the insurer to the insured insurance certificate (policy) with the rules of insurance attached to it.

Conditions what the insurance agreement of the real estate is concluded on, as a rule, are defined in standard insurance rules of the proper kind, established, approved or asserted by the insurer or association of insurers. The conditions contained in rules of insurance, the parties may not include in the text of the insurance contract.

In spite of it, the given conditions are obligatory for the insured in the event that in the contract (insurance policy) it is directly specified such rules to be applied and the rules themselves are stated in the same document with the contract or on its back, or attached to it. When rules are handed over to the insured at the contract conclusion their reception by the insured should be certified by the note in the contract. While concluding the contract the parties can agree to change or to exclude individual provisions of the insurance rules or, on the contrary, to supplement them.

The insurance certificate should contain the following data:

- name of document;
- name, legal address and bank details of the insurer;
- surname, name, patronymic or name of the insured and his address;
- insurance object indication;
- insurance payment size;
- insurance risk (risks) indication;
- insurance fee size, terms and order of payment of insurance premiums;
- duration of the contract;
- order of changing and termination of the agreement;
- other conditions coordinated by the parties including additions to the insurance rules or exceptions to them;
- signatures of the parties.

The contract of property insurance should be concluded in writing which its nonobservance entails invalidity of the contract. The exception to this rule is provided only for contracts of obligatory state insurance.

The insurance contract can be concluded by two ways: by drawing up of one document signed by the parties, or by handing over by the insurer to the insured on the basis of his written or oral statement insurance policy (certificate, receipt), signed by the insurer. At the conclusion of the contract the insurer has the right to apply the standard forms of the contract (insurance policy) developed by him.

The insurance contract comes into effect at the moment of the insurance premium payment by the insured or its first fee unless otherwise envisaged by the contract.

The real estate can be insured under the contract of insurance in favour of other person (insured or beneficiary), having, based on the law, other legal act or a contract, interest in preservation of this property. Such person can be not only its proprietor of the real estate, but also its tenant, employer, pledgee, etc. If the insured or beneficiary has no interest in preservation of the insured real estate the property insurance contract is void.

Sometimes the contract of property insurance is concluded in favour of the beneficiary without his or its name specified. In this case an insurance policy to bearer is issued and as the beneficiary one acknowledges the person who has shown such policy to the insurer.

At the conclusion of the contract the insured is obliged to inform the insurer the circumstances known to him being of essential meaning for definition of onset probability of contingency and sizes of possible losses from its onset if these circumstances are unknown and should not be known to the insurer. In so doing one acknowledges as essential the circumstances stipulated by the insurer in the standard form of the insurance contract (insurance policy) or in his letter of inquiry. If the insurance contract has been concluded, in spite of the fact that the insured has not answered to any questions of the insurer, the insurer cannot demand cancellation of the agreement or its invalidation on the ground that the essential circumstances have not been informed by the insured.

If after the conclusion of the insurance contract it is found out, that the insured has given deliberately false information to the insurer on the mentioned circumstances, the insurer has the right to demand invalidation of debts. However, he has no right to do it if circumstances the insured held back, fell already away.

At the conclusion of the insurance contract of property the insurer has the right to examine an insured property, and if necessary — to set an appraisal that will help to find out its actual value. The insurer's responsibilities include:

- familiarize the insured with the insurance rules;
- in case of taking measures by the insured that have reduced risk of the insured event onset and the possible damage size to the insured real estate, or in case of its actual value increase to renew the contract of insurance taking these circumstances into account by statement of the insured;
- at the insured event onset to pay insurance money within the period established by the contract or the law. Otherwise the insurer will have to pay to the insured a fine amounting to 1 percent of the insurance payoff sum for each day delay;
- to refund expenses incurred by the insured at the contingency onset for prevention or reduction of damage to the insured property if reimbursement of such expenses is provided by the insurance rules. At that expenses in a part exceeding the caused damage size are not compensated;

- not to disclose data on the insured and his property status, except for the cases provided by the legislation;

- others, stipulated by the insurance agreement. The insured's responsibility includes:

- to make insurance fees in due time;

- while concluding the insurance contract to inform the insurer on all circumstances known to him being important for an estimation of insurance risk, and also on all insurance contracts concluded or being concluded concerning the given object of insurance;

- to take necessary measures for prevention and reduction of damage to the insured real estate at the event onset and to inform the insurer on the insured event onset within the time established by the insurance agreement.

This list is not exhaustive since the insurance contract may establish other responsibilities of the insured.

#### *Deductible.*

Very often while insureds are insured one offers them to be insured with the deductible, justifying it by benefit for the insured. Is that indeed the case? Let us try to figure out. The deductible is provided by the insurance contract provisions relief of the insurer from payment of damages, not exceeding the certain size. They distinguish a conditional (nondeductible) or an unconditional (deductible) franchise.

Let us take the insurance of a new Russian car as an example. Let an insurance sum equal \$5000. Then for "hijacking + damage" insurance you will have to pay \$400. They suggest to be insured with \$100 deductible, in so doing you will have to pay for the insurance not \$400 but \$380. Is it advantageously? Now - yes it is, and what will be later? The trick begins at the compensation stage.

Let us assume, you have scratched the car a little or your headlight has been broken - that we have got, as you know, pretty often. The deductible availability means, that if the size of damage has not exceeded \$100, you make repair at your own expense. I think that the majority of insurers will only gain from it. It is much faster to stop by a car service and do everything for five minutes, than to be engaged in settlement through the insurance company - you will spend more papers and time, and it is not bad for an insurance company too - there is no need to care about each trifle. Here the interests of insurance companies and insureds coincide.

But if something more serious has happened - here everything becomes differently. Your car has been repaired and they have submitted an invoice to the insurance company, but the insurance company will pay \$100 less, and these deficient \$100 you will have to pay by yourself. In this situation only the insurance company is the gainer, whereas you have saved \$20 at the conclusion stage, you have lost \$100 at the compensation stage. And if suddenly in some time you have an

insured event again then at this pay-out too you will add \$100 again from your pocket etc.

Besides, an interesting moment arises in the case if the damage has exceeded the franchise a little, for example it equals \$120. In this case the insurance company will pay to you only \$20. And in this situation a quite reasonable question arises - "and whether it is worth spending one's time to gather documents to get this compensation for \$20?" And, as a rule, everything is done at own expense - thus, increasing the deductible for themselves though they have got discount only for \$100. Who is it more profitable for - to the insured or the insurer?

The franchise, that means all aforementioned, is called the unconditional franchise it is that that is mostly offered at insurance companies.

There is one more kind of franchise - conditional one. The conditional deductible means, that if the loss at an insured event has not exceeded the size of the stipulated franchise then the insurer pays nothing for such a loss. In case if the loss has exceeded the franchise size such a loss is compensated completely, i.e. in our case if the loss is less than \$100 the insured covers it at own expense and if it has exceeded than the insurance company compensates it completely.

This kind of the deductible, undoubtedly, is more interesting to the insured, allowing saving, even if smaller sum, than in case of the unconditional franchise.

Alas, the conditional deductible is rarely used by Russian insurance companies.

Insurance of property of industrial enterprises, establishments, and organisations. Let us dwell on voluntary property insurance that can provide protection against the insured events stipulated in the contract or «against all risks». Property insurance acts by the principle of a concrete covering of requirement that should prevent enrichment of the insured.

For insurance purposes it is used to classify property according to kinds of managing subjects it belongs to.

One distinguishes property of industrial enterprises, agricultural enterprises, property of citizens.

The taxable property of industrial enterprises includes:

- buildings, constructions, objects of an incomplete capital construction, transport vehicles, machines, equipment, stock, inventory holdings and other property belonging to enterprises and organisations;

- property taken by organisations on commission, for storage, processing, repair, transportation, etc.

The concept of a building which is subject to insurance, is defined like this: all building constructions adapted for reception of people, animals or property, including connecting bridges, ramps, sheds, fences, yard and pavement kerbing, moreover,

chimneys (including separately standing), water towers, separately standing silo and other tanks (storages) if they are made of brick, stone or concrete.

If the insured has expressed wish to insure temporary structures, tents, inflatable pavilions and other similar premises constructed for intermediate purposes then they should be particularly recorded in an insurance contract.

By the wish of the insured it is possible to exclude from insurance parts of a building or property less subject to the danger, falling under «building» position (for example, foundations, foundation and cellar walls, brick holes on open space, yard works on ample parcels of land of the enterprise), having represented it in the insurance contract.

In so doing, these objects can be insured against damages due to an earthquake, a landslip, a landslide, a storm, a hurricane, flood, hail, a downpour, inundation, a fire, an explosion, soil subsidence, unusual to the given area frosts and heavy snowfalls, action of subsoil waters, a thunderbolt, an accident, penetration of water from the adjacent premise, wrongful acts of the third parties.

The equipment notion which is subject to insurance includes the technical and commercial industrial equipment. The insured can be: previously built-in and nonstationary equipment of all kinds, including foundations and intrawall details related to it.

However, admitted for operation cars, automobile trailers, truck tractors, visual models, prototypes, exhibition models, are excluded from them, and also typical industrial accessories that are not needed for current production any more. This property can be insured by the insurance contract separate from the main one.

The equipment can be insured against damages as a result of an earthquake, a fire, an explosion, a thunderbolt, an accident, penetration of water from the adjacent premise, damage of property by water from plumbing and sewer and fire control systems, wrongful acts of the third parties, burglary. The inventory of an insured enterprise may be subject to insurance.

Raw materials for production, work-in-process and finished commodity, trading goods, valuable waste products, building, industrial and auxiliary materials, such as lubricants, fuel, solvents, cleaners, packing, foodstuff and feeding products (for animals) are considered as inventory. Here one can relate insurance of goods in circulation too. These objects (inventory, goods in circulation) can be insured against damages as a result of an earthquake, a fire, an explosion, a thunderbolt, an accident, penetration of water from the adjacent premise, damage of property by water from plumbing and sewer and fire control systems, wrongful acts of the third parties, burglary.

(Passenger and freight) vehicles and other nonstationary mechanisms can be subject to insurance.

These objects can be insured against damages as a result of a fire, an explosion, a thunderbolt, wrongful acts of the third parties, theft.

The insurance agreement of the property belonging to the enterprise, may be concluded for the full value or for some part (percent) of it, but no less than 50 % of the property book value. When the property is insured for some part then all insurance objects are considered insured for the same percent from their value.

The property, taken from other organisations and population on commission, for storage, processing, repair, transportation, etc., is considered insured proceeding from the cost specified in documents on its reception, but not higher than this property actual value (minus depreciation).

Property insurance is carried in case of destruction or damage as a result of the risks mentioned above, and depending on a kind of property, its location, cost, value, condition, protectability degree, etc. the insurer together with the insured choose necessary risk factors.

Principally the insurer will involve appraisers to determine of real (sale) value of the property being insured.

Insurance money is paid for all ruined or damaged property specified in the contract of insurance and located at the place, specified in the insurance contract and for which insurance payment has been paid (and also for the property the Insured received for the effective period of contract if it has been stipulated in the concrete contract of insurance). The insured is compensated for the expenses connected with rescue of property, dealing with prevention and reduction of damage in case of a natural disaster or an accident, and also those for putting the insured property in order after a natural disaster. The real property objects transferred as security.

In practice, even more often the real property objects transferred as security are subject to insurance and this security ensures mortgagor's liabilities. Because of it the object of pledge insurance is of no small importance for the pledgee. Pledge — one of the ways (the most widespread and efficient) to ensure proper fulfillment of obligations. Pledge does not exist by itself, and is always of a derivative nature from the concrete civil law contract ensured by it (of loan, purchase and sale, hiring (rent), cargo transportation etc.) and must ensure its fulfillment and payment of damages owing to infringement of conditions of this contract.

Only a certain property or property rights can be a pledge object. The finding of conformity of pledge object to law requirements is one of the important tasks in work on the contract of pledge conclusion.

When such a property is being insured it is advisable to insure it against fire risks (fire, an explosion, a thunderbolt) and against risks of natural disasters (earthquake, a landslip, a landslide, a storm, a hurricane, a flood, a hail, a downpour,

impoundment, soil subsidence, unforeseen frosts and heavy snowfalls, action of subsoil waters). In each concrete case the Insurer estimates the risk of damage or loss of the insured goods in circulation according to their location, protectability, technical or commodity condition, etc.

The property that is transferred as security, should meet requirements such as:

- should have some material value, i.e. everything, that has or at least is able to have a pecuniary valuation (as things, money, securities, as the rights to them);

- should possess an assured function (possibility of the creditor to sell a pledge object with the subsequent satisfaction of own requirements due to proceeds earlier than other creditors);

- should have a commodity form (property not withdrawn from circulation;

The law allows possibility of claim to such a property, i.e. sale is permitted by the law; the mortgager should possess an exclusive right to alienation of the corresponding property);

- to possess characteristics of the property: a thing created by the human being (for example, a building, an equipment, private use objects); a thing being in its natural state (for example, natural resources, money, etc.).

Hence it is possible to conclude, that a pledge object can be practically any property that belongs to the pledger as the proprietary right or full economic management. Therefore according to the legislation it can be alienated and one can claim to it.

In case of insurance of pledged property its cost is estimated, proceeding from the contract of pledge, and also on the basis of an expert valuation of this property.

While concluding the contract of insurance and establishing its duration it is necessary to consider the grounds for the right of pledge termination. While insuring a pledge object, it is not less important to establish an expiration of insurance contract. In overwhelming majority of cases as this date they take time of performance of obligation ensured by a pledge. One can do so, if not to ponder on negative consequences of such a decision, in the first place, for creditors.

The insurance payment (compensation) — fulfilment of insurance liability, at that the insurer fulfills one's own and not another's responsibility. It occurs then when an insured event the insured informs about in his application, corresponds to the risks specified in the insurance agreement. In the specified case, rather interested party in results of insurance is the pledgee. It is he who will get the insurance compensation in case if the insurer's liability to make the insurance payment occurs. In addition it is not out of place to notice, that at such insurance - in favour of the third party - the third parties themselves do not take part in the contract conclusion, obtaining the rights by will of the person interested - insured. The aforementioned



does not need to publicize the necessity and utility of insurance of pledged property since it is advantageous for everybody, and first and foremost, for the pledger.

The real property objects containing some goods.

In this case one can insure the goods enumerated on the list, as well as a premise (real property) it is in.

The insured value:

a) of the goods made by the insured (work-in-process and finished commodity),  
- expenses for analogue making;

b) of the goods sold by the insured, raw materials used by the insured to produce goods, and natural resources - price of replacement purchase.

The wholesale trade companies may insure their products in the limited volume and at sales price. The goods prepared for sale, sold at a sticky price and ready to shipment which reception the buyer cannot refuse from, are insured at the coordinated sale price minus the saved expenses.

At insurance of a product as well as an object it is in, they are estimated separately and may have as identical as different risk factors.

*Objects of incomplete capital construction.*

In practice it is often necessary to insure objects of incomplete capital construction. The objects, which construction was carried out at the expense of republican and local budgets of all levels, and also of means of state enterprises and their associations, are related to them.

These objects can be insured against damages due to an earthquake, a landslip, a landslide, a storm, a hurricane, flood, hail, a downpour, inundation, a fire, an explosion, soil subsidence, unusual to the given area frosts and heavy snowfalls, action of subsoil waters, a thunderbolt, an accident, penetration of water from the adjacent premise, wrongful acts of the third parties.

Such objects are unified by mutual characteristics, namely:

- which duration of construction exceeds standard one by more than 2 times and which construction readiness level 50% or less;
- which construction readiness level 50 percent and more;
- there are no sources of their financing, and there is a consent of the body, authorised to manage a corresponding property;
- are conserved or construction is suspended.

To determine the insured value of incomplete capital construction object the insured involves appraisers.

The replacement cost of incomplete construction objects is determined taking account of their actual condition, of presence, at a building area, of materials suitable for use, products, and structures, of equipment both transferred, and not transferred for assembly, and also that which does not need assembly, of other factors that

influence the price. If at an object there is equipment, its cost is determined separately and is included in the replacement cost of incomplete construction objects. It is recommended to complete and use housing objects after the sale only for initial purposes. The specialization of social sphere objects can be changed in coordination with local governments. The rest of objects after sale it is necessary to complete, as a rule, at a new owner's discretion. The replacement cost of such objects is defined on the basis of their division into groups: long-range, conventional (on the basis of total signs) and unviable.

The 1st and the 2nd ways are used to determine the cost of incomplete construction objects, related to long-range ones.

According to the 1st way the replacement cost is determined by formula:

$$C_B = C_{1984} \times K_{TOT} \times K_{\phi} \times K_{II} + C_{MAT}, \text{ where:}$$

$C_B$  - replacement cost (on the valuation date);

$C_{1984}$  - complete estimated cost of incomplete construction objects at the prices of 1984 (equipment cost excluded);

$K_{TOT}$  - coefficient reflecting the construction readiness level of an object;

$K_{\phi}$  - coefficient representing a physical depreciation of a structure;

$K_{II}$  - factor of prices considering changes of construction cost as of date of estimation of a current year in relation to construction cost, calculated at the prices of 1984;

$C_{MAT}$  - cost of materials, products and structures delivered to a building area and have not been put to use (on the current year valuation date).

According to the 2nd way they take into account:

- cost made up of actually expensed costs for incomplete construction of an object by individual years, specified in accounting records;

- additional expenses arisen because of the rise in prices on material and manpower resources as of January, 1 or July, 1 of a current year;

- cost of materials, products and structures delivered to a building site and have not been put to use;

- cost of an equipment both transferred, and not transferred for assembly, and also that which does not need assembly.

The 3rd way is used to determine the cost of objects, related to unviable ones.

The replacement cost of such objects is equal to a minimum price. The minimum price is defined by market value of equipment, materials, products, structures, one will get at dismantling of incomplete structures and buildings (temporary ones included) and that after dismantling are suitable for further use, and also of those available on a building site and suitable for the further operation.

The minimum price does not include:

- costs for dismantling of the equipment, materials, products, structures and bringing them into a utilizable condition;
- value of equipment, materials, products, structures that cannot be either dismantled or used after dismantling. Such material resources are subject to a write-off.

## TOPIC 10. REAL PROPERTY APPRAISAL

Appraisal as the major function of a control system precedes making practically any decision concerning real property. It is usually made by professional appraisers of immovable by order of the proprietor or the buyer before transaction conclusion, for getting of the real estate loan, at division of property or making contribution into authorized capital stock of a commercial organisation, at insurance and taxation of objects and for many other purposes. Making valuation is obligatory according to legislative acts of the RK:

- for taxation;
- for repayment or other withdrawal of the real property from the proprietor for the state or municipal needs;
- for transfer of the state property into the entrusted administration or privatisation;
- for realisations of investment projects with attraction of budgetary funds;
- for mortgage lending;
- for definition of cost of the debtor's property when he or the exactor objects to making appraisal by the law enforcement officer.

The appraisal — methodically substantiated opinion of the expert about the real property object value and the process of its determination (calculation).

Appraisers possess skills to determine market value of one or another object and have special licence to this type of activity. They specialise, as a rule, by the real property kinds (housing, commercial, industrial).

Appraisers are also differentiated by the types of tasks, they fulfill:

«*assessor-appraiser*» estimates the real property for taxation purposes;

«*valuer appraiser*» does it for the property market needs.

Both the seller and the buyer of the real property are interested in the appraiser's activity. For the former the valuation means the minimum price level for the real property, and for the latter the appraisal establishes the sale price ceiling. While submitting a report the appraiser bears legal responsibility for methods used and completeness of data involved. As a rule, he should not estimate objects, where there is his own interest. The appraiser's remuneration (commission) is determined neither by the results of valuation nor by the estimated object value, and by the volume of works. If as a result of a wrong appraisal the client has been inflicted material losses, then the appraiser bears material responsibility. Hence, he needs his professional activity to be insured.

The appraiser has the right to:

- choose and apply independently methods of making appraisal of an object according to standards and rules of making appraisal;

- demand from the customer to ensure the access to the valuation object and to provide necessary documents;

- request, in writing to the third parties, including authorities, the information necessary for performing appraisal, excluding the data considered the state or trade secret;

- get other experts and appraisers on a contractual basis to take part in the object appraisal, whose actions (inactivity) he is responsible for;

- refuse to perform appraisal of an object if the customer has breached contract provisions.

The appraiser is obliged to:

- observe, when performing appraisal activity, the requirement of laws, other applicable normative acts of the RK as well as the subjects of RK.

- inform the customer on impossibility of one's participation in making valuation of an object in the cases stipulated by the Law, other legislation of the RK, and also owing to emergence of other circumstances hampering in performing an objective appraisal of the real property object;

- ensure preservation of the documents received from the customer and the third parties during appraising, and to return to the customer the documents received from him simultaneously giving him an appraisal report;

- give to the customer the information about position, rules and a charter, a code of ethics of a corresponding authorised body of a self-regulating organization (nonprofit organisation of appraisers), the appraiser refers to the accreditation validity in his report, also to give other information on requirements of the legislation regarding the appraisal activity at the customer's request;

- inform the customer on availability of the appraiser licence concerning category of valuation objects stipulated by an appraisal contract;

- during the period, defined by the appraisal contract, not to disclose a confidential information received from the customer during making appraisal of the valuation object, except for the cases provided by legislative acts of the RK;

- in the cases stipulated by the legislative acts of the RK, to give the information, containing in the appraisal report he keeps, to law-enforcement, judicial, other specially authorized state bodies at their official legal request;

- keep written out reports on valuation of the object appraisal for three years.

The appraisal of the appraisal object cannot be performed by the appraiser if he is either the founder, the proprietor, the shareholder or the official of the legal person or the customer or the individual having the property interest in the appraisal object, or he is immediate related or related by marriage to the mentioned persons.

Making valuation of an object is not allowed, if:

- the appraiser has proprietary interests or laws of obligation out of the contract concerning the appraisal object;
- the appraiser is either the founder, the proprietor, the shareholder, the creditor, the insurer of the legal person or the legal body is the founder, the shareholder, the creditor, the insurer of the appraiser.

Intervention of the customer or other interested persons in activity of the appraiser, if it can negatively affect reliability of results of making valuation of appraisal objects, including by restricting the range of problems that have to be clarified or be defined while performing appraisal of the valuation object, is not allowed. A monetary or other reward of a professional appraiser for performing appraisal of the appraisal object cannot depend on total quantity of value of the appraisal object. The grounds for making valuation of an object are the contract between the appraiser and the customer which the general norms of the CC of the RK are applied to.

The contract should contain:

- precise description of an object with its kind specified;
- kind of value being defined;
- information that the appraiser has a proper licence;
- data about that that the appraiser is a proper professional appraiser (if the contract is concluded by a professional appraiser);
- the appraiser's remuneration sum in terms of money.

The real property object appraisal report must not allow ambiguous interpretation or mislead. In the report date of performing appraisal of the appraisal object, one uses normative and instructive materials, including standards of appraisal, aims and tasks of making valuation of the appraisal object, other data, necessary for complete and unambiguous interpretation of results of performing appraisal of the appraisal object, reflected in the report, are given. In case if while performing appraisal of the appraisal object not the market value but other kinds of value is defined, in the report criteria of an establishment of the appraisal project value and causes of deviation from possibility of definition of a market value of the valuation object.

In the report one should specify:

- drawing up date and serial number of the report;
- grounds for performing appraisal of the appraisal object by the appraiser;
- the legal address and (or) the constant residence address of the appraiser and the data, allowing to identify him as a proper professional appraiser;

- precise description of the valuation object, and concerning the appraisal object belonging to the legal person, — details of the holder of balance and the book value of the given valuation object;

- standards and rules of making appraisal for definition of a corresponding kind of the appraisal object value, a substantiation of their use at performing appraisal of the given valuation object, the list of data used while making appraisal of the given valuation object with sources of their reception specified, and also assumptions made while performing appraisal of the valuation object;

- sequence of definition of market or other value of appraisal object and its total value, and also restrictions and limits of application of the received result;

- list of the documents used by the appraiser and establishing quantitative and qualitative characteristics of the valuation object.

The report can contain other data too, being, according to the appraiser, essentially important for completeness of reflexion of the calculation method of appraisal object value applied by him. The report is signed with the appraiser's own hand and is certified by his seal.

In case the property appraisal was made by several appraisers at the different valuation objects being a part of this property, the report is signed by each appraiser with indication of objects he performed appraisal of.

The total market or other value of the appraisal object, specified in the report, is supposed to be reliable and recommended for purposes of fulfilment of the transaction with the valuation object.

In case there is a dispute about reliability of quantity of market or other value of the appraisal object, determined in the report, including owing to another available report on appraisal of the same object, the mentioned dispute is subject to judicial examination, arbitration or reference tribunals by agreement of the parties of a dispute or at indication on such a settlement of a dispute in the contract according to the established jurisdiction or by an administrative procedure.

### **10.1 Real property appraisal principles**

In world practice participants of the real property market have developed the unified set of fundamental valuation rules or principles that are combined into four interrelated groups.

The principles of the real property user:

-utility;

-replacement;

-expectation

Principle of the best and the most efficient use (PBEU)

Principles connected with the real property object:

- residual productivity;
- contribution;
- decreasing and increasing returns;
- equilibration (commensurability);
- optimal size;
- economic division and integration of rights in rem

Principles of external market environment:

- correspondence;
- dependence;
- supply and demand;
- competition;
- change.

1. Utility principle: any real estate object possesses value if it may be useful to a potential owner for realisation of enterprise activity or satisfaction of social or psychological needs. A commodity without consumer properties, nobody needs. It is the utility that makes the consumer value of an object.

Utility is an ability of the real estate to meet requirements of the user at the given place and for a certain period of time.

2. Replacement principle: the average (rational) buyer will not pay for the real property object more than the minimum price for other similar object with the same utility. In other words, the maximum property value is defined by the least price or value at which other property with equivalent utility can be acquired. By its content this principle is similar to the alternative expenses concept — that the investor loses when investing in the given real property object proper, having refused from other alternative variants of investment.

3. Anticipation principle: property object value establishment at current cost of incomes or other benefits that can be received in the future from the demesne. It is known, that cost of money changes in time. The future rouble costs less, than today's. Time factor is expressed through discount factor ( $K_n$ ):

$$K_n = (1 + i)^{-n}, \text{ where: (11.1)}$$

$i$  - interest rate, unit's parts (or profit shares from investments in a year);

$T$  - number of years between the year of investment and the year of receipt (return) of money.

4. Principle of land residual productivity: the residual productivity is the basis of land lots cost, i.e. the net produce size after payment of labour inputs (remuneration), the capital (percent, dividends), management (profit). As the land is immovable, the labour, the capital and the management as active mobile factors, are applied to it in



the course of an entrepreneurial activity, and their expenses (these three factors) are compensated in the first place, and only the rest of the income, as the rent, is related to the land. The residual (additional) productivity arises because the land as the «passive» immovable factor allows receiving in a corresponding place the additional income due to gain maximisation, cost minimization or satisfaction of special needs. Only by the external form - by the calculation technique - the ground rent looks «residual», instead of additional profitability. Actually the land is irreplaceable in enterprise activity and participates in income creation together with factors attached to it.

For example, two identical land lots, one of which due to its corner location can bring in return 2 times more than that located within a quarter.

5. Contribution principle: contribution is the sum of increase or decrease of an object value or the income from it owing to presence or absence of any additional factor. More precisely, the contribution is an increment of the real estate value as a result of addition or its improvement, and not actual expenses for the object development.

6. Principle of decreasing and increasing returns reflects well-known regularity concerning decreasing ultimate output: as investments grow the total profitability increases intensively to a certain limit after which value increment rates become lower than rates of additional expenses.

7. Principle of equilibration (commensurability): optimum combination of the rest of entrepreneurship factors corresponds to any type of land tenure, providing the maximum land cost. When proportionality is violated there emerge «underimproved» or «overimproved» objects, and the efficiency of land use decreases.

8. Principle of size optimality: in any market there is an optimum quantity of land necessary for an efficient use of various kinds of the real estate. Going out of the optimality limits in economy leads to the profitability loss. The insufficient size of a land lot reduces cost of the enterprise because of shortage of a place for the various purposes (warehousing, a parking, etc.), and a redundant one - does not bring the corresponding income.

9. Principle of economic division and integration of rights in rem: property rights should be divided and integrated so that to increase a total value of the real property object. Different ways of division of the rights are possible:

- physical division is a vertical division of rights of use of air space, the surface of land lot and its bowels;

- division by time of possession and use - rent for different periods, estate for life, the rights to the future objects, etc.;

- division by rights of use - restrictions on the object use (historical monuments, specially protected territories, etc.), the limited right of use of another's property (various servitudes), licences, etc.;

- division by kinds of rights in rem - joint tenancy, associations, a trust, options, condominiums, conditional purchase and sale, etc.;

- division by liens - primary, secondary pledges of an object and mortgage deeds, participation in the capital;

- horizontal physical division - large tracts of land subdivided into areas being in demand, raising the total profitability of the real estate.

10. Dependence principle: the real property object value depends on quality of its location, conformity of physical parameters of an area to the type of land tenure, normal for this district, and affinity to both an economic environment and infrastructure, i.e. on the real estate sine.

Environment changes can raise or under a negative influence - to lower the object value, which itself influences the value of other nearby objects.

11. Correspondence principle proves the rule - maximum value is formed when architecture, level of conveniences and pattern of use of an object correspond to requirements and market expectations. It is implemented in two principles connected with it that is regression and progression.

The progression takes place, when thanks to high value of neighbouring objects the underimproved property value increases.

Regress defines reduction of the real property value at its excessive improvement regarding local market conditions i.e. when an expensive object is found among less prestigious houses, most likely its market value will be lower than expenses for its construction.

12. Competition principle acts in such a manner that the normal profit generates a competition which stimulates development of the real estate market, and the superprofit leads to decrease in its profitability.

13. Change principle reflects instability of the real estate value in time as a result of the processes occurring as within the object itself (physical obsolescence, reconstruction, etc.), as in the environment. It is known, that separately taken real estate objects, settlements and regions go through four stages: growth, stability, recession and renewal which accordingly influence property value too.

14. Supply and demand principle says: the real estate price is defined by supply and demand interaction on a corresponding segment of the market. In the modern real estate market the supply exceeds the demand which changes depending on a set of conditions, including emotional too.

15. Principle of the best and most efficient use of the object - reasonable and possible use of it ensuring the highest current value of the real estate on the appraisal date.

## **10.2 Methods of the real property valuation**

Under conditions of market economy there are three basic approaches to the real property objects valuation: 1) from viewpoint of comparative sales analysis

(comparative or market method), 2) from the point of view of expenses for the firm assets creation (cost-based method), from the viewpoint of the expected income from the real estate object use (profitable method).

1. The market (comparative) method of appraisal assumes the real estate object valuation by its direct comparison with similar kinds of the property that have been on sale on the market recently and desirably at the same district. If, for example, four of five houses of approximately one type, size and construction period have been sold for x monetary units, the fifth house value is estimated in x monetary units too. In other words, for comparison they choose objects «competing» with the appraised one, however because among objects of the real estate there are always certain differences, the appraiser should make a corresponding data adjustment.

Accuracy of the market method depends, first, on volume of the market of comparable real estate objects, and secondly, on the quality of gathered information. Information — basic tool of the comparative method. The latter is physical characteristics (architectural design, age of a building, land lot sizes, a parity of a total and a rentable area, quality of movable structures), prices, sale time, location, terms of sale and terms of financing. As base for appraisal one should not be guided by the prices of transactions concluded between interdependent persons, sale prices of the real estate without heirs/successors. The appraiser should gather, checkup and «clear» data of compared transactions, to take into consideration all private conditions of the transaction and make corresponding corrections of the compared data, choosing transactions of the same kind and establishing benchmarks for appraisal.

There are the following five key parametres according to which it is necessary to make corrections of the real property:

- time (if transactions with the comparable property took place in the past, that, defining the real estate value at the present moment, the appraiser should consider, what has changed for the time passed, whether essentially new objects of this type have emerged, whether the factors influencing the demand for this kind of property what inflation is, etc.),

- location (if compared objects are at different places the appraiser should consider the pluses and the minuses of each object),

- financing (essential influence on the investor's decision and the sale price, financing methods exert, therefore it is necessary to know terms of financing of past sales),

- terms of sale (the investor should be sure, that buyers and sellers in the given market are guided by common motives — difficulty of access to the information, that is characteristic for the imperfect markets, and for the real estate market in particular, can render the comparative analysis useless),

- physical characteristics (area and volume of a structure, quantity and purpose of premises, age of a building, number of storeys, etc.).

The comparative method is the most widespread for a real estate valuation as it is simple and exact in the conditions of actively functioning market of the given kind of the real estate objects, i.e. when there are large quantity of sellers and buyers, and there is a free access to information too.

The efficiency of the market method decreases, if the quantity of transactions is insignificant, if after fulfilment of similar transactions, a lot of time has passed, if the appraiser has no reliable data concerning transactions by a similar kind of the real estate. Any monopolisation of the information is not acceptable here. Knowledge of the public of all sales in the market of the real estate and the transaction prices creates obstacles for speculation and thereby promotes a normal development of this market. The market method is hardly applicable now to the appraisal of objects of the industrial real property in the RK as the Kazakhstan stock market is still insufficiently developed, and the Soviet industrial enterprises were constructed not by typical, and by unique projects. It is clear, that the given method should not be applied to the valuation of the real property being of historical and architectural value.

The market approach assumes that the given real estate is sold at current market value. It means the price at which the real estate will be sold in the market in the conditions of competition, both among sellers, and among buyers when either of them have all necessary information, and any non- market circumstances do not tell on the price value. As a rule, the market cost is estimated from the point of view of the buyer and the seller typical for the given submarket of the real estate. At the same time the shown quantity of value by no means is not the final price which is accepted by the parties without discussion. It is just the most probable starting price for negotiating between the seller and the buyer regarding which as markups as reductions are possible.

The highest price which the buyer is ready to pay of his own accord and the lowest price which the seller agrees to, without any compulsion, is called the

equilibrium market value. It results from the parties being in the know about the quality of the appraised real property object and interests of each other.

As a whole the market approach is based on the replacement principle: the reasonable buyer under conditions of the open market will consider all alternatives from the available information and will act rationally and reasonably, will not pay for the real property object a higher price than the one of other substitute suitable for him.

The cost-based method of the real property object appraisal or valuation of a company from the viewpoint of its assets relies on the international accounting principles and uses data of the accounting reports of the operating enterprise. This method proceeds from the fact that the real property object value is equal to expenses for its production (reproduction) minus accrued depreciation charges. According to the cost-based method the real estate appraisal is based on separate appraisal of land lot cost and determination of cost of assets at their replacement cost, i.e. proceeding from a current and not past cost of similar assets.

The land lot cost is considered separately, proceeding from a principle of its effective utilisation according to which alternative variants of land use are analyzed, and its maximum residual value is determined. The value of buildings and works is considered at the replacement cost, at that in the theory of the real estate there are two concepts concerning buildings and works:

- full replacement cost, i.e. construction cost of the building/work at the current prices having an equal utility with the appraised object, but constructed according to modern standards, design and layout;

- full cost of reproduction, i.e. construction cost of the exact copy of building/work at the current prices, using the same materials, building standards, design and the quality of works is the same, as those regarding the appraisal object that is appraised at the current prices;

In other words, in the first case they provide for the building replacement with a suitable substitute, and in the second case — reproduction of an exact copy.

The cost-based method produces the best results in case of a small cumulative depreciation; at a new object construction, in the absence of data about the market. As a rule, the given method is used when the real estate objects of a special purpose are appraised, for insurance goals, and also at appraisal of an object for the purpose of the property taxation when one needs separate valuations of a building/work cost and the land value. At the same time it is difficult to apply it to the appraisal of buildings being of unique architecturally and aesthetic features, and also of historical buildings and houses with a high level of depreciation. The cost-based method is objective, simple in calculations, is proved by financial documents.

As the disadvantage of the cost-based method one should note that it is based on appraisals connected with the results of the past activity of the enterprise. In the conditions of high rates of inflation such an appraisal quickly loses touch with market valuation of assets, thereby losing its significance. Moreover, the cost-based method disregards the supply and demand factor.

With the help of the cost-based method, as a rule, a lower bound of the real estate object value is defined. If the given real estate object is required to be appraised together with a parcel of land it is located on, it is necessary to define a current market land cost, while assuming that the land is vacant, to subtract current expenses for reconstruction of the area and to add to full replacement cost or to full reproduction cost of the immovable object.

When the cost-based method is used, following kinds of costs are defined:

- net book value, i.e. accounting cost of equity basis, makes a difference between assets holdings, on the one hand, and the sum total of accumulated depreciation plus liabilities, on the other hand (assets is estimated at their initial cost, and liabilities at the nominal acquisition price; intangible assets, as a rule, are not reflected in the balance sheet, except those cases when they have been purchased or the enterprise has incurred real costs for their creation);

- corrected book value, i.e. the difference between the market value of assets and liabilities of the enterprise, and also a variant — actual net cost of assets based on the definition of the sale price of various as tangible as appraisable intangible assets (goodwill, a trade mark, business connections, etc.) minus the total amount of liabilities;

- liquidating value means the net sum of money the proprietor can receive when a company is dissolved and its assets are sold in parts, i.e. with no account taken of the connection of separate components with the rest of the property parts (when defining the liquidating value it is necessary to consider all expenses connected with this procedure: commission charges, administrative costs for maintenance of the company work before the end of its dissolution, taxes, expenses on legal and accounting services), and it is used when business is not profitable and has no prospects for development (for example, owing to the termination of economic life of the real estate object);

- replacement cost estimates, how much full replacement (substitution) of the appraised real estate at the present time considering corrections for its functional (reduction of cost of assets of the enterprise that cannot bring effect any more, compared to new similar assets), economic (an estimation of degree of influence of environment on the given business), physical (loss of a part of the cost by assets owing to depreciation) depreciation (while calculating the given cost, usually for determination of the basic foundation of property insurance and taxation the

intangible assets are included too (patents, licences, copyrights) plus cost of organisation (enterprise).

The cost-based method is based on the replacement principle. It proceeds from the fact that any rational buyer will not pay for the real estate a higher price than the sum equivalent to its utility.

3. The profitable method is connected with definition of the future incomes flow received from commercial use of the real property object. In other words, the profitable method is the process of definition of the present cost of the future incomes which are expected from use or possible further sale of the real estate. It considers degree of risk of reception of the income and abstracts from past results of activity of the given business. The profitable method more operatively, than the rest of appraisal methods of the real estate, considers market factors. It relies on the anticipation principle and needs a serious marketing research. Within the frameworks of this approach the most often used methods based on discounting of monetary flows are both calculation of the actual net value and determination of the internal rate of return. The method of the discounted cash flows is especially popular and is widely used for valuation of the commercial and industrial real property value, i.e. it is applicable only to kinds of the property that brings in the income. Hence, only the investor can use the profitable method. According to this method the value of assets is measured by their ability to create the income. The future receipts from the real estate, expenses of the used capital and time period during which the real estate will bring in the income exceeding expenses are thus estimated. More often this method is used for a company value appraisal as the object of the real estate sphere. The result of the profitable method use is definition of investment value, i.e. a particular cost of the real estate object for an individual investor, received on the basis of his personal requirements to his own investments. It is connected with current cost of the future flows of monetary funds calculated on the discount rate basis, acceptable for an individual investor. This approach considers financing scales, the degree of risk, consequences of taxation, etc. The defining circumstance when choosing the rate of discounting is the income from alternative investments accessible to the investor with an equal risk level and the account of possible losses from inflation. The value established this way can represent the market value too if the buyer and the seller agrees with the shown calculations.

As a disadvantage of the profitable method one should point to a relatively narrow sphere of its application. This method is inapplicable, if the property (for example, individual housing construction) does not bring in the profit. The determination of capitalization rate (rate of discounting) causes some difficulties. It is a subjective process to a large extent. One more problem is forecasting of change of cost of inputs in the future. The real property appraisal methods considered above are

based on various preconditions and technologies. Therefore the results calculated by one or another method, can differ from each other. The real property object appraisal allows parallelism when the same object is appraised by two or even three methods for more objectivity.

From the point of view of operations that can be performed with the real estate objects, all kinds of the listed values can be divided into two subtypes for convenience: value in exchange and value in use. Cost in an exchange, is the equilibrium price formed under the influence of supply and demand on the free market and represents the actual cost of the rights to the future incomes. The most widespread type of the given subtype is the market value that is also called the objective value. The cost in use is the real property value for the investor, when the latter estimates the real property as the constituent of his company assets. At that it can be a question of the real estate, bringing in the income. The most famous type of this value subtype is the investment value that is called a subjective value too. It is clear, that cost in use can differ from the cost in an exchange.

The results of the real property object appraisal should be presented in writing. The appraisal report contains the description of all factors influencing the property estimation, and should answer a number of requirements: be clear and intelligible for the customer, not allow the dual interpretation of separate points, and contain any extraordinary assumptions, capable to influence the valuation essentially.



## **TOPIC 11. STATE REGISTRATION OF THE RIGHTS TO THE REAL PROPERTY AND OF TRANSACTIONS WITH IT**

### **11.1 General provisions**

In December, 1995 the Decree of the President of Republic Kazakhstan «About the state registration of the rights to real estate and transactions with it» has been passed. The passage of this Decree is stipulated by the requirement of article 118 of the Civil code of the Republic of Kazakhstan regulating necessity of registration in the single state register of the rights, their origin, transfer and termination.

The given Decree became the base legislative act on creation of the single system of the state registration of the rights to the real property and transactions with it. It is directed on stabilisation of market relations and on an essential decrease of aggravated negative processes dealing with the real property transactions. The registration system guarantees legal protection to owners of the registered rights to the real estate. The registered rights to the real estate by interested persons have a priority over unregistered ones. The availability of a unified information system allows receiving the information about land and other objects of the real property from one source that promotes the market activity of managing subjects, and also meets interests of physical persons in the civil matter area.

The basic difference of a new registration system from the practice existed before the enactment of the Decree, consists in the following:

- the single state registration of the rights to the real property in bodies of the Ministry of Justice of the Republic of Kazakhstan;

- state registration becomes the single proof of existence of the registered rights;
- state provides legal guarantees and property protection

1) The theme is disclosed according to G.P. Kovalenko's book - «The real property market in the Republic of Kazakhstan» Chapter 3, p. 12-31.

citizens, legal persons and the state;

- obligatory notarial authentication of contracts of purchase and sale of the real estate is cancelled, at that the obligatory notarial certification of the rent remains. The state registration is characterised by that that a necessary condition is compliance of the registered object to legislation requirements. It means that the functions of the registering body include carrying out of legal examination of objects, checkup of legal personality and authority of the possessor of the right or his representative. The legal cadastre is the single state register of the registered rights to real estate and the only source of the information on the rights (encumbrances) to it. It means that in the legal cadastre there is data on all encumbrances of the rights preventing the possessor of the right to fulfill agreements concerning his property.

The system of registration of the rights to the real estate and transactions with it is an essential component of the infrastructure of the countries with the market economy and is a unique source of the official information on the rights to the land and other real property. By means of the mentioned system operations with the land and the real estate are registered and acquire the validity.

The introduction of the registration system provides consolidation of guarantees of the property rights to the land and other real estate, promotes development of the real estate market, and also strengthening of system of crediting due to provision of credit institutions with a guarantee reliable source via the mortgage.

In the majority of the countries of the world they spent decades to create registration systems.

We do not have so much time therefore state registration of the rights to the real property and transactions with it goes on at a rapid pace. Wide powers of the republican state enterprises «Real estate centers» of the Committee of the registration service of the Ministry of Justice of the RK — recognise and certify on behalf of the state the origin, restriction, transfer or termination of the rights to the real estate - impose a serious responsibility on them.

The main condition and advantage of the state registration of the rights — uniformity of this procedure on the whole territory of Kazakhstan. The formation of the single data bank in the Republic of Kazakhstan will allow accelerating the development of registration system of the rights will simplify the procedure with transactions and will provide a reliable protection of the rights of the possessor of the right against the claim of the third parties.

Transition from the excessive centralised state regulation of economy management to economic freedom cannot be understood as complete refusal from state regulation of property relations in a society. On the contrary, the state role in the legal regulation of relations concerning the real estate becomes complicated. The state as represented by its economic management bodies becomes the equal participant of proprietary relations, it bears responsibility for decisions made by them regarding norms stipulated by the civil legislation.

The issues of creation and development of legal state include the whole complex of measures on provision of equal rights to all members of a society, including property rights too. Accordingly the problem of the legal state is creation of conditions for their protection and provision of guarantees for a fair estimation.

Formation and development of system of the state registration of the rights to the real estate and transactions with it in the Republic of Kazakhstan is directed on protection of the rights of proprietors and guaranteeing of reliable information about the real estate. The state registration task - first of all, to protect the rights of proprietors and to guarantee reliable information about the real property. The legal

cadastre is the main (basic) document of the single system of the state registration of the rights to real property and transactions with it and contains information of the legal, economic, technical nature concerning these rights. The legal cadastre consists of three sections, which content is defined by the norms of the Decree of the President of Republic Kazakhstan being legally valid of December 25, 1995 «About the state registration of the rights to real estate and transactions with it».

The Legal cadastre on the whole territory of the Republic of Kazakhstan is kept by registering bodies of the Ministry of Justice which are created in administrative regions, cities. According to the approved forms a cadastral number - individual, nonrepeating on the territory of the RK, has to be given to each object of the real property. A cadastral number of a building, a construction consists of the cadastral number of land lot and the inventory number of a building, a construction. State registration of the rights to the real property and of transactions with is made with the aim of recognition and confirmation by the state of the grounds of origin, transfer, encumbrance or termination of the rights to the real property. It is directed on streamlining of the civil turnover and protection of the rights of property owners. The state registration should be made by the single system of records concerning each real property object in the Single state register of the rights to the real property and of transactions with it.

Such a registration is the single proof of existence of the registered right for all persons as it is not disputed judicially. The state registration of the real property and transactions with it - legal act of a recognition and confirmation of origin, restrictions, transfer or termination of the rights to the real property is the proof of existence of the right to the real property.

It is made on the whole territory of the RK according to the system of records about the rights to each object in the Single state register of the rights (SSRR). It is made at the real property location in a registration district.

State registration date is day of entering of record about the rights into the SSRR. The registered right can be disputed only in legal form. Refusal or evasion of the state registration can be appealed in court, arbitration tribunal.

Proprietors of the real property.

Owners of other rights to the real property, subjecting to the state registration, including:

- citizens of the RK
- foreign citizens
- stateless persons
- legal persons of the RK and foreign ones
- international organizations
- Kazakhstan

- subjects of the RK
- municipal formations
- foreign states
- juridical institutions for the state registration of the rights to the real property.
- Ministry of Justice of the RK.
- Committee of the registration service of the Ministry of Justice of the RK.
- The real property centers
- urban, district branches

Bodies and establishments for the special registration and the account of separate kinds of the real property

- Committee of the RK on land relations and land management.
- Department of municipal property.
- Committee on the state property of the RK.
- Other bodies

Along with the state registration a special registration or a technical account of separate kinds of the real estate can be conducted.

## **11.2 Objects of the state registration of the rights to the real property and of transactions with it**

As objects of registration they understand the right, encumbrance, change or termination of the rights, change of identification characteristics of the real property object or the data of the right holder, that are subject to registration in the Legal cadastre.

### **REGISTRATION OBJECTS**

#### **1. Right of ownership**

- 1.1 state
- 1.2 private
- 1.3 common
- 1.4 joint
- 1.5 because of acquisition prescription
- 1.6 other firms

#### **2. Real rights**

- 2.1 of economic management
- 2.2 of operational management
- 2.3 inherited life possession of the land lot
- 2.4 constant use of the land lot
- other rights

### 3. Limitations of rights

3.1 servitudes

3.2 mortgage

3.3 entrusted administration

3.4 rent

3.5 arrest

3.6 leasing

3.7 other limitations

### 4. Transactions assuring

4.1 accrual of rights

4.2 changes of rights

4.3 confirmation of rights

### 5. The real property as the special registration object

5.1 parcels of land

5.2 sites of bowels

5.3 isolated water basins

5.4 constructions and works

5.5 housing and uninhabited premises

5.6 forests and perennial premises

5.7 enterprises as ownership complexes

5.8 newly created object

5.9 condominiums

5.10 incomplete construction

### 6. Special conditions

6.1 the rights accrued before 1.02.98, are valid without the state registration

6.2 the state registration in the subjects of the RK and municipalities before 01.02.98.

6.3 the state registration of transactions after 02.02.98 demands registration of the rights to the object, accrued before 02.02.98.

Nowadays the list of the registration objects is given in two legislative acts: Art. 118 of the CC of the RK and Art. 2 of the Decree «About the state registration of the rights to real estate and transactions with it»

All objects liable to the state registration of the rights to the real property and of transactions with it, specified in the par. 2 of Art. 118 of the Civil code: «right of ownership; economic management right; operative management rights; land tenure right for more than 1 year period; right of use for more than 1 year period; mortgage; the real property rent; entrusted administration right».

According to Art. 2 of the President's Decree which is statutory «About the state registration of the rights to real estate and of transactions with it» from December 25,

1995 of No.2727 objects of the state registration are following: «right of ownership; economic management right; operative management rights; land tenure right for more than 1 year period; right of use of more than 1 year period; mortgage; rent; other rights to the real property, and also encumbrance of rights to the real property».

Proceeding from a priority of legislative acts, depending on date of their passage fixed by Art. 4 of the Law of the RK of March, 24, 1998 «About regulatory legal acts», nowadays objects of registration are defined according to the Civil code.

The objects of registration, in accordance with par. 1 of Art. 118 of the CC of the RK, except certain rights to the real property, are also limitations of these rights, their accrual, transfer and suspension. Except the listed ones, according par. 2 of Art. 2 of the Decree «About the state registration of the rights to real estate and transactions with it» the changes of the rights to the real property and their encumbrances are related to the objects of registration. Because of it there arises a question concerning legal consequences of registration of changes, termination of the rights to real estate and their encumbrances. There is one more question: since what moment encumbrances are considered accrued or the rights are considered suspended? In particular, the decision of court to arrest the real estate object can be registered after its entry into force. If before registration of such a decision the real estate object is sold, the transaction can be invalidated as stipulated provided by the par. 3 of the Art. 158 of the CC of the RK: «In case one of participants of the transaction has made it with intention to evade from fulfillment of the obligation or from responsibility to the third party or the state, and the other participant of the transaction knew or would have known about this intention, the interested person (state) has the right to demand a recognition of the transaction as invalid».

Whereas in those cases when arrest has not been registered, the registering body had no grounds for refusal in registration of property alienation transaction.

In view of the stated data it is necessary to recognise, that encumbrances of the rights to the real estate are considered accrued from the moment of their state registration. The termination of the rights to the real estate should be also recognized from the moment of registration of the specified fact, except for certain cases. In those cases when the rights of one possessor are suspended, and the rights of another one accrue on the basis of the same fact (for example transaction), problems in defining the moment of the termination of the right do not arise.

The rights to aircrafts and sea-going vessels, vessels of internal water navigation and space objects are regulated by the legislation.

At property right abandonment as provided by Art. 250 of the CC of the RK, such problems also do not arise, since according to the specified article «property right abandonment does not entail the termination of the rights and liabilities of the proprietor concerning corresponding property till the moment of acquisition of the

property right to the given property by other person», that is till the moment of the state registration of the right. The accrual of the rights to such a property must conform to the rules, stipulated by Art. 242 of the CC of the RK. In accordance with par. 3 of Art. 118 of the CC of the RK the real property contracts are subject to the state registration. As, according to the par. 2 of Art. 118 of the CC of the RK and Art. 2 of the Decree «About the state registration of the rights to real estate and transactions with it» the registration objects are not all rights to the real property, in the par. 1 of Art. 23 of the Decree it is established that the real property transactions creating, changing or suspending the rights listed in subparagraphs 1-8 of the par. 1 of Art. 2 of the Decree are considered concluded since their registration moment.

### **11.3 The historical retrospective of functioning of systems of the real property rights registration**

In the world there are two systems of the real property rights registration: Anglo-American and European.

Liberal Anglo-American rules provide for the registration of the property rights transfer to the real property under contracts between its former and new owners. To secure the contract as much as possible against possible mistakes, a new proprietor has to use expensive services of insurance and law companies which analyze the whole history of the real property object over 70 years period. Careful check allows revealing possible outstanding liabilities or the rights of any persons to the given object, i.e. checking up its legal cleanliness. Such a system of the real estate registration though demands a lot of monetary expenses for the property right protection, but in case of occurrence of any usurpations of the object or demands now it is an insurance firm that bears responsibility, an insurance fee has been paid to.

The most widespread European system of registration is based on the state guarantees of the property right to the real estate. At such organisation all history of the real estate is in the single state register and the whole set of the rights to property, including servitudes, is guaranteed by the state too. If further any mistakes are revealed, for example, disability of individuals or other omissions then the governmental body is responsible and compensates the costs that have arisen by this reason. The state registration and guarantees of the property rights to the real estate is much more reliable and cheaper, than private systems of registration of transactions, instead of the rights.

The state registration of the transactions, which subject is the real estate, is applied for a long time in the developed foreign countries. For example, in Germany and Switzerland there are special land books or other registers of the land lots where

they enter information about the rights in rem to the real estate and change of property rights to this property. The transfer of the right in rem to the real property must be certified notarially and there is an entry about it in a land book. They make an entry of the right termination too. Such books are kept in courts.

In England the sale contract or other deed of conveyance of the land or other objects - buildings, on-the-root harvest, cattle on a farm and so forth - demands for transfer of the property right to one needs a special transfer deed after verification of the transaction's lawfulness by a competent person. The legislation in a number of states of the USA demands the registration of such transactions too. These requirements should ensure publicity and legality of the rights in rem to the real estate. Any interested person can familiarise with corresponding records in a register to find out, who is the proprietor of a land lot or a building erected on it, whether they are charged with the tax. Registration systems, with which the property rights to the land use and other real property are reliably fixed, are an integral component of an economic infrastructure of the market economy. Nowadays in Kazakhstan the quantity of proprietors and users, whose rights are subject to registration, runs to about 4, 5 million. The majority of enterprises, apartments and houses in Kazakhstan have already been privatised, both these property rights and subsequent transactions are subject to the registration too.

The experience of the countries having the formed system of the real estate registration, shows, that certain principles have to be included in the registration system. The given principles are: responsibility of the system, located in one agency, this agency should act impartially and independently; operations should be regulated by the law; registration entries should be orientated by unique identification numbers of land lots; registration should be coordinated with physical cadastres; boundaries should be drawn and disputes are recognised in court; the claim order (contest of the rights) should be systematic and clear; the register should be accessible to the public control.



## **TOPIC 12. THE INTRODUCTION OF THE STATE REGISTRATION OF THE RIGHTS TO THE REAL PROPERTY AND OF TRANSACTIONS WITH IT IN THE RK**

In the Republic of Kazakhstan on the basis of Art. 118 of the Civil code and according to the Decree of the President which is statutory, of December 25, 1995 of No. 2727 «About the state registration of the rights to real estate and transactions with it» the system has been introduced and it functions in the Republic from the moment of registering bodies creation (August-September 1997) (Further — the Real property centers).

Today, the answer to the question since what moment in the Republic of Kazakhstan the state registration of the rights to the real property and of transactions with it, will be introduced, is vague. The point is that the state registration is introduced by norms of the Civil code and the Decree «About the state registration of the rights to real estate and transactions with it». But the CC of the RK was instituted since March 1, 1995. The Decree - since March 1, 1996. The Civil code does not define bodies registering functions are entrusted to. In practice registering functions were carried out by departments of appraisal and registration of the real property, created according to the Decision of the Cabinet of Ministers of the RK from January, 10, 1995 of No. 30 «About appraisal and registration of real estate». According to the mentioned Decision, departments, functions on registration of buildings, structures, constructions, and also their constituents (inhabited and uninhabited premises), were entrusted to. The registration of the rights, including ones to the land, was not stipulated by the Decision. For the first time registering bodies have been defined by the Decree «About the state registration of the rights to real estate and transactions with it».

According to Art. 5 of this Decree the state registration of the rights to the real property and of transactions with it is conducted by the bodies of the Ministry of Justice of the Republic of Kazakhstan. The process of creation of such bodies has started from the date of passage of decision of the Government of the RK of February, 20, 1997 of No. 236 «About measures to realise the Decree of the President of the Republic of Kazakhstan», being statutory, of December, 25, 1995 of No. 2727.

The decision provides for the transfer under the jurisdiction of the Ministry of Justice of the Republic of Kazakhstan of establishments and enterprises created under local executive powers for appraisal and registration of the real estate, having renamed (having transformed) them into regional (city) Real property centers of the Ministry of Justice of the Republic of Kazakhstan with the system of branches in administrative regions.

The organizational and legal form of departments of appraisal and registration of the real property in the Republic was various. With the aim of unification of the organizational and legal form and conditions of material support (financing) by the Decision of the Government of the RK of August, 15, 1997 «About transformation of establishments and enterprises for appraisal and registration of real estate into the state enterprises «Real property Centers under the Agency on registration of the real property and legal persons of the Ministry of Justice of the Republic of Kazakhstan» all regional (city) establishments have been transformed into the state enterprises «Real property Centers» as economic management.

Thus only from the moment of creation of registering bodies the subjects of legal relations an actual possibility has raised to register the right to the real estate, stipulated by Art. 2 of the Decree «About the state registration of the rights to real estate and transactions with it».

### **12.1 Submission of documents for the registration**

The list of necessary documents for the registration, established by the Decree «About the state registration of the rights to real estate and transactions with it» (par.2 of the art 13), includes:

- 1) application with the request for the registration of the rights to the real property;
- 2) documents confirming the right to the real property (contracts concerning the real estate, acts and privatisation certificates, certificates of the right to inheritance, judicial decisions coming into effect and other documents);
- 3) documents confirming the payment of registering body services.

The state registration of the rights to the real estate is conducted on the basis of the statement of the possessor of the right, of the parties of the contract or persons authorised by them if he has properly drawn up power of attorney.

In case the rights accrue on the basis of a state body act or a local government act, an application for the state registration of the right is filed by the person whom the mentioned adopted acts concern.

In case the rights accrue on the basis of contracts (transactions) not requiring a notarial authentication (and this authentication is not obligatory for the given kind of transaction), application for the state registration of the rights is filed by all parties of the contract (transaction). At evasion of one of the parties from the state registration of the rights the property right transfer is registered on the basis of the judgement given at the request of the other party. The losses resulting from suspension of the state registration of the rights, the evading party bears.

In case the rights accrue on the basis of contracts (transactions) not requiring a notarial authentication, but certified notarially by the wish of a party, an application for the state registration of the rights is filed by one of the parties of a contract or transaction. To the application for the state registration of the rights must be attached the documents wanted to do it.

In case of the state registration of the rights to the real estate belonging to the Republic of Kazakhstan, to subjects of the Republic of Kazakhstan, bodies of state power, local governments, and also persons and citizens have the right to act on their behalf.

Together with an application for the state registration of the rights and documents on the rights to the real estate the document on registration payment is shown. An individual shows the document identifying him, and the representative of the legal person -founding documents of the legal person, and also the document confirming his powers to act on behalf of the given legal person. When receiving entitlements for the state registration of the rights the official of a registering body makes a corresponding entry in the book of documents arriving for the registration.

Registration actions begin from the moment of acceptance of documents for the state registration of the rights. The state registration of the rights to the real property and of transactions with it is made in sequence defined by the documents acceptance order. The transaction is considered registered, and legal consequences come from the day when an entry about the transaction or the right is made in the Legal cadastre.

## **12.2 Grounds for the state registration**

The grounds for the state registration of availability, accrual, termination, transfer, limitation (encumbrance) of the rights to the real property and of transactions with it, are:

- acts, issued by public authorities or local governments within the limits of their competence and as it is established by the legislation efficient in a place of issue at the moment of their issue;

- agreements and other transactions concerning the real property, made according to the legislation efficient in the location of the real estate objects at the moment of settlement of transaction;

- acts (certificates) of the privatisation of residential premises performed according to the legislation, existed in a place of carrying out of privatisation at the moment of it is accomplished;

- certificates of the right to inheritance;
- judgements came into effect;

- acts of the rights to the real property, issued by designated public authorities as it is established by the legislation efficient in a place of issue of such acts at the moment of their issue;

- other acts of transfer of rights to the real estate and to transactions with it to the applicant from the former right holder according to the legislation existed in a place of transfer at the moment it is being made.

According to Art. 236 of the CC of the RK «the property right to buildings, constructions, other property complexes under construction, and also to other newly created real estate accrues from the moment of completion of this property creation». The ground for accrual of the property right to newly created real estate is the decision of akimat about commissioning on the basis of an acceptance and transfer certificate. In the Law «About architecture and town planning in the Republic of Kazakhstan» of 1993 in Art. 29 it is defined: «Document certifying the putting of an object and a complex in operation, is the document confirming the property right of the legal and physical person to the commissioned object and the complex, or to its part».

The legal effect verification of the rights of entitlements submitted for the state registration of the rights is done by a registering body. The state registration of the rights to the real estate and of transactions with it is made with account of identification, technical, cost, legal, and also of other characteristics of the real estate objects necessary for keeping of the Legal cadastre, at the location of the real estate object by registering bodies in corresponding administrative-territorial units, i.e. definition of technical characteristics is a component of the state registration of the rights to real estate and transactions with it.

The real estate centres bear responsibility for accuracy of the provided information, for violation of mode of protection, of processing, of the order of presentation and using of data.

Transfer of a state ownership of separate real property objects or groups of objects lately very often is made on the basis non-normative acts - decisions of the Government of the RK regarding certain enterprises or a group of enterprises located on the territory of the RK.

To the general rule about acquisition of the property right to the real estate from the moment of registration there is an exception for accrual of the property right to the real estate purchased by members of consumer cooperatives (housing, dacha, garage or other cooperative). The persons who completely have brought all share, get the property right to these objects after contributing the last share to this property. Since this moment the property automatically changes the proprietor, and a subsequent preparation on this property just confirms the property right of a new proprietor, but is of no lawmaking importance. In the rest of cases the property right

to newly created immovable objects accrues, as was already said, from the moment of the state registration. The civil code stipulates possibility of the property right accrual to ownerless immovable objects that have no proprietor or which a proprietor has refused from, or which the proprietor has lost the property right to. This can be a dwelling house, other building or construction or other property. According to par. 3 of Art. 242 of the CC of the RK «ownerless immovable things are registered by the body conducting the state registration of the real estate by the statement of a local executive office which territory they are revealed on. After 1 year from the date of registration of an ownerless immovable thing the body, authorised to manage a municipal property, can go to the law demanding to recognize this thing as passed to a municipal property. The ownerless immovable thing unrecognised by court decision as passed to a municipal property, may be again got in possession, use and disposal by the proprietor, who has left it, or purchased because of acquisitive limitation (article 240 of the current Code)»

Article 240 of the CC of the RK defines a norm of the property right acquisition to the property according to acquisitive limitation:

«The citizen or the legal body being not the proprietor of property, but possessing as own real estate in good faith, openly and continuously within fifteen years or other property not less than fifteen years, acquires the property right to this property». In this case it is necessary to make its state registration, and for this purpose, apparently, it is necessary, that the court has preliminary confirmed good faith, openness and continuity of possession of the property as one's own by the given person.

Real estate acquisition by acquisitive limitation is liable to the state registration after establishment of the fact of acquisitive limitation. Practice of acquisition of the property right by acquisitive limitation has not developed yet, however in decisions of courts there are already references to this ground. A special way of accrual of the property right to the real estate is privatisation. In this way the property being in public ownership, passes in private one of citizens and legal persons. In these cases acquisition and termination of the property right have some peculiarities and depend on objects of privatisation — parcels of land, state enterprises, uninhabited and residential premises.

### **12.3 Requirements to the documents submitted for registration**

The documents establishing presence, accrual, termination, transfer, restriction (encumbrance) of the rights to the real property and submitted for the state registration of the rights, must meet the requirements established by the legislation of

the Republic of Kazakhstan, and reflect the information necessary for the state registration of the rights to the real estate in the single state register of the rights. The mentioned documents have to contain the description of the real property and a kind of the registered right, and in the cases established by the legislation must be notarially certified, sealed, have proper signatures of the parties or the persons defined by the legislation.

Texts of the documents presented for the state registration of the rights, have to be written plain, names of legal bodies — without abbreviation, with their locations specified. Surnames, names and patronymics of physical persons, addresses of their places of residence must be written in full. The documents having erasures or additions, crossed out words and other corrections not stipulated in them, the documents executed with a pencil, and also the documents with serious damages not allowing interpreting unequivocally their content are not subject to be received for the state registration of the rights.

All documents necessary for the state registration of the rights, are submitted in duplicate, one of which has to be an original or a notarially certified copy. After the registration the original (notarially certified copy) is returned to the owner of the rights.

The refusal to accept documents for the state registration of the rights to the real property and of transactions with it is allowed only by motives of improper documents submission. According to Art. 16 of the Decree after acceptance of documents for the registration of the rights to the real property a registering body has to date and put time of receipt of documents, and to the applicant is given the return receipt of corresponding documents for registration.

## **12.4 Grounds for the registration refusal**

The refusal for the state registration of the rights to the real property and of transactions with it is possible only under conditions stated in Art. 19 of the Decree «About the state registration of the rights to real estate and transactions with it». The ground for refusal are: documents not meet the requirements, established in the arts. 15 and 22 of the current Decree; the request for the right registration made by a disable citizen. According to Art. 155 of the CC of the RK «refusal in registration must be registered in writing and is possible only with reference to the legislation requirements violation».

If the registrar of the rights to the real property and of transactions with it has some doubt of the grounds for the state registration of the rights he is obliged to take necessary measures to obtain an additional data within ten days. The registrar of the

rights is obliged to inform the applicant about it at once who has the right to present additional proofs that he has the grounds for the state registration of the rights.

The commented norm does not contain the list of the reasons entailing the registration suspension. As a rule, doubts may arise after documents acceptance at stages of their legal examination or absence of contradictions between the declared and already registered rights to the given object. In particular, doubts may arise regarding: reliability of the documents presented to get the inference; the rights proper to the real estate object; competence of both an applicant and his representative to participate in the registration procedure etc.

The decision on the registration suspension has to be drawn up in writing. Making decision on the registration suspension on this ground charges the registrar to take necessary measures for obtaining of the additional data, allowing removing the doubts which have arisen (for example to request the person, whose power of attorney has been attached to the application for registration, for the purpose of confirming the fact of its issue, etc.).

Whereas the applicant who has received a letter of notification about the registration suspension, has a right to present additional documents proving his right. Any suspension of a course of term means suspension of this term. The decision about the suspension has to be made within 10 days. Thus to make necessary measures to obtain additional information one has another 10 days calculated from the moment of decision-making about the suspension.

Upon termination of this period the course of the total term of registration recommences. Thus, the total term of the registration of the rights to the real property with account of its suspension on the registrar's initiative cannot exceed 20 days from the moment of a filing of application for the registration. When sending documents to confirm their authenticity the registrar is obliged to notify the applicant in written form not only about the registration suspension, but also about the grounds for making such a decision. The state registration of the rights may be suspended for no more than ten days when sending the submitted documents to confirm their authenticity. The registrar of the rights has to notify the applicant in writing about his decision to suspend the state registration of the claimed rights and about the grounds of such a decision. In case, if during the terms specified in the current point the reasons preventing the state registration of the rights will be removed, the registrar of the rights is obliged to refuse the state registration of the rights to the applicant and to make a corresponding entry about it in the book of the documents registration.

By the statement of the person contesting the right, other person has addressed to register, this right registration may be suspended for no more than ten days period. If during this term the person contesting the right, does not present proofs that he has brought an action, the registration of the rights should be made, and if there are

proofs about bringing an action the registration of the contested right is suspended till it is settled by court. In any case within the total term given for the registration, the decision on registration or refusal to do it must be made.

The state registration of the rights may be refused in cases, if: the right to the real estate object the state registration is requested by the applicant, is not the right liable to the state registration of the rights according to the Decree; the application for the state registration of the rights, an improper person has addressed with; documents submitted for the state registration of the rights, in form or in content do not meet current legislation requirements; act of the state structure or act of a local government about granting of the rights to the real estate is invalidated from the moment of its issue according to the legislation existed in a place of its issue at the moment of the issue; person who has given out a right establishing document, is not authorised to dispose of the right to the given real estate object; person who has the rights limited by certain conditions, has drawn up the document without these conditions specified; entitlement on the real property object indicates the applicant has no rights to the given real estate object.

From these grounds follows, that refusal in the registration is connected with the absence of right to the registration. Therefore refusal in the state registration is necessary to distinguishing from return of documents to the applicant. The main reason to return the documents to the applicant should be considered non submission (incomplete submission) of the documents necessary for making the registration, for example, there is no document about the registration payment, etc. Other reason can be submission of the documents having erasures or additions, crossed out words and other corrections not stipulated in them. The documents executed with a pencil, and also the documents with serious damages not allowing interpreting unequivocally their content are subject to return. When a decision is made to refuse the state registration of the rights after the termination of the term established for consideration of the application, they send a written notification about the cause of refusal to the applicant, and the copy of the mentioned notification is put in the file of right establishing documents. The state registration of the rights refusal can be appealed by the interested person in court.



## **TOPIC 13. CORRECTION OF CLERICAL ERRORS. TECHNICAL INVENTORY**

Clerical errors in the records, made at the state registration of the rights to the real estate, not changing belonging, character or content of the registered right, can be corrected by a registering body independently along with the notice of all interested persons. The correction of the clerical mistake made at the state registration of the rights, is made in case if there are no grounds to believe, that such a correction can cause damage or infringe legitimate interests of right holders or the third parties who relied on corresponding registration entries. The correction of the mistakes changing belonging, character or content of the registered right is permitted only by the written consent of the interested persons. If the registration of the rights is made on the basis of the document certified by an authorised body, correction of errors is permitted provided that this body made corresponding changes to the mentioned document.

If there are some grounds to believe that the correction of the clerical mistake can cause damage or break legitimate interests of possessors of the right or the third parties who relied on corresponding registration entries then such a correction is made under the court decision. The question, who must relate to judicial bodies, has not been decided by the law. We believe, that to judicial bodies in such cases as enterprises, as the interested person who has found a mistake, can address. In each particular case the state registrar bears responsibility to define whether it is possible to correct a clerical mistake been made by himself or one needs a court decision to do it.

One can relate to clerical mistakes of the first group, i.e. corrected by the registrar's decision, certainly, such as grammatical errors, insignificant misprints, both in the text and in the description of the registration object. The correction of such errors is made by the registrar of the rights' decision after detection of an error or reception from any interested person of a written statement about an error in entries. The interested persons are, first and foremost, right holders, heirs of the contract party.

After reception of a written statement the decision about error correction can be fixed by making an inscription on the statement that a corresponding correction has been made and adding the date and the signature of the registrar. The application has to be kept in the file of entitlements. When the registrar himself or other employees of juridical institutions on the rights registration it is necessary to record as error detection as the registrar's decision about its correction. In such cases one thinks it the most expedient to draw up an act or other document that must reflect who found, when and what mistake and what decision, the registrar has made.

Clerical errors at the state registration of the rights may be made while making entries into the register as well as when issuing the state registration certificate of rights. The decree does not establish ways of correction of clerical mistakes, evidently, giving the right to the registrar to define them depending on a kind of error. At correction of entries in the register one must make an entry about it in «special notes of the registrar» column with the date of error correction specified and with the registrar's signature. The correction of mistakes in the certificate of the state registration entails the issue of a new certificate, naturally, with withdrawal of the one earlier issued with a mistake.

### **13.1 Legal cadaster**

The task of the state registration - first of all, to protect the rights of proprietors and to guarantee reliable information about the real property. The legal cadastre is the main (basic) document of the single system of the state registration of the rights to real property and transactions with it and contains information of the legal, economic, technical nature concerning these rights.

The legal cadastre consists of three sections, which content is defined by the norms of the Decree of the President of the Republic of Kazakhstan being legally valid of December 25, 1995 «About the state registration of the rights to real estate and transactions with it».

The Single state register of the rights to the real property consists of:

1. information on both the existing and terminated rights to the real estate;
2. (identification, technical, cost) data about the objects of the real property;
3. information about right holders.

The Single state register is eternal (destruction and withdrawal of documents or their parts is not permitted), it is kept on paper data carriers.

The registration book consists of registration sheets and contains notes about:

- 1) rights to the real property object;
- 2) accrual, transfer and suspension of rights;
- 3) limitations (encumbrances).

The form of a registration sheet of the Legal cadastre is affirmed by the Government. It consists of three sections:

- 1) land lot identification features;
  - 2) register of the rights to real property;
  - 3) register of encumbrances with the release of collateral
1. land cadastre map;
  2. registration book;

### 3. registration files

Registration file:

- 1) formed on each object;
- 2) contains right establishing documents and technical passport on an object;
- 3) identified by a cadastral number.

The Legal cadastre on the whole territory of the Republic of Kazakhstan is kept by registering bodies of the Ministry of Justice which are created in administrative regions, cities. According to the approved forms a cadastral number - individual, nonrepeating on the territory of the RK, has to be given to each object of the real property. A cadastral number of a building, a construction consists of the cadastral number of land lot and the inventory number of a building, a construction. State registration of the rights to the real property and of transactions with it is made with the aim of recognition and confirmation by the state of the grounds of origin, transfer, encumbrance or termination of the rights to the real property. It is directed on streamlining of the civil turnover and protection of the rights of property owners. The state registration should be made by the single system of entries about each the real property object in the Single state register of the rights to the real property and of transactions with it. Such a registration is the single proof of existence of the registered right for all persons as it is not disputed in legal form.

At the same time the registration should have an open public character. Any person will be able to get the information on the registered rights to the real estate objects that will allow avoiding many abuses and disputes after the specified Law will be passed.

## **13.2 Technical inventory of the real property**

In the conditions of an intensive development of market relations a fast and precise reflexion of the basic characteristics of buildings and structures in the field of the real estate inventory becomes more and more topical.

The state registration of the rights to the real estate and of transactions with it is made with account of identification, technical, cost, legal, and also of other characteristics of the real estate objects necessary for keeping of the Legal cadastre. The system of the registration of the rights to the real estate and transactions with it in the Legal cadastre is carried out by the object principle; it is attached to the parcels of land and is a uniform one for all categories of lands and other objects of the real estate located on them.

The property right and other rights in rem accrue when immovable objects are erected or they are reconstructed, sold; there are various contracts of purchase and

sale, of barter, deeds of a gift and other transactions where registration of a full package of documents, as a rule, begins with technical inventory that is drafting of technical passports. The technical inventory is the system of gathering, processing, storage and delivery of the information on presence, structure, location and a technical condition on the basis of results of periodic inspections in kind. Also it is necessary to consider, that technical passport availability is required in a number of important cases: mortgage lending, commissioning of a new real estate object, legalisation of inhabited and uninhabited structures (in judicial bodies or architecture one), change of residential address (registration of domicile), computation of the property of physical and legal persons...

### **13.3 The real property object identification**

The peculiarity of the real estate valuation is the complex approach which simultaneously considers the real estate and as real-life physical object and as a set of the rights private or legal bodies that they can have or show to the property, and also to the use of land lots and structures. As object of estimation can be the real estate with the full or partial property interests determined by separation or division of the property rights. In the course of definition of the market value of the real estate the appraiser considers such restrictions of the property rights, as lease contract, servitudes, limitations caused by mortgage retention of the real estate object, claim to ownership, and disposal rights of air space or ground territory.

If the concrete case of estimation demands simultaneously to define the market value of the whole real estate object as well as a separate element being the partial right, then at first one should estimate the market value of the whole object with the estate in fee simple. Then one estimates the cost of partial ownership rights in the real estate object, with account of the market information on a reaction of the market to a certain kind of partial ownership rights.

However even the full estimation may contain a number of limiting conditions which should be formulated in the task for an estimation along with such parametres as identification of the real estate, of the property rights, estimation date, sphere of application of appraisal results, and also a kind of cost. Introduction of composition of limiting conditions in the report allows not only protecting the appraiser from possible future claims, but also in proper time to inform the customer and other users of the report. For example, the limiting condition may contain the point on obtaining of data from insufficiently reliable sources, on impossibility of carrying out of technical inspection of the real estate.

The purposes, tasks and grounds of carrying out of technical inventory.

Because of publication of the Decision of the Government of the Republic of Kazakhstan of September, 22 1999 of No. 1440 “About introducing amendments and additions to the Decision of the Government of the Republic of Kazakhstan of March, 31, 1999 of No. 343 “About development of the market of individual kinds of works and services” the activity in the field of the real estate inventory is transferred to the competitive environment. Therefore for the purpose of uniformity of works on technical inventory the experts of both state and private structures have to use the same methods, instructions and rules that have been gathered in the given publication.

Due to a technical inspection they determine the condition of buildings and works, their dilapidation and accidentance that allows promptly making repair work, hence, to preserve buildings and works from destructions. Taking technical characteristics into account they make the estimation of both movables and immovables for the purposes of taxation, mortgage lending etc. The technical inventory was subdivided into a primary (basic) and a current registration of inventory changes. The primary (basic) was called the inventory carried out in a given settlement with inclusion of all structures to get necessary data on them at certain date. It was made by complete inspection of objects, parcels of land and came to an end with working out of the inventory plan of a city, settlement (village) and drawing up of a primary statistical summary. Inventory was made without fail not rarely than once in five years. A current registration of inventory changes purposed to consider changes in structure, condition and cost of structures involved in the primary (basic) inventory, and was made, as a rule, after general overhauls, replannings, erections or pulling downs of structures, changes of borders of land lots etc...

With the purpose of the exhaustive account of changes Recorders of deeds made planned, continuous rounds, at that annually they had to inspect not less than 20 percent of total number of housing estates, and for the five years' period - the whole available housing of each settlement. At present a total inventory in the Republic of Kazakhstan, unfortunately is not made. The technical inventory is now made without prior arrangement, i.e. there is no full information about presence and condition of the real estate condition.

The technical inventory is an integrated system of gathering, processing, storage and delivery of the information on presence, structure, location and a technical condition of the inventory object.

Carrying out of the technical inventory is regulated by articles 118 and 155 of the Civil code of the Republic of Kazakhstan the Decree of the President of the Republic of Kazakhstan which is statutory “About the state registration of the rights to real estate and transactions with it” of No. 2727 of 25.12.95, by the Decision of the Government of the Republic of Kazakhstan of September, 22 1999 of No. 1440”

About introducing amendments and additions to the Decision of the Government of the Republic of Kazakhstan of March, 31, 1999 of No. 343 “About development of the market of individual kinds of works and services”.

The basic document technical inventory experts should be guided by in the activity, - Rules on carrying out of technical inventory (technical inspection) of the real estate for the state registration of the rights to the real estate and transactions with it, confirmed by the order of the Chairman of the Committee of registration service of the Ministry of Justice of the Republic of Kazakhstan of No. 270 from December, 14, 1999. The rules establish the order of carrying out of technical inventory and drawing up of technical passports by the established forms and define the list of the objects being subject to the technical inspection and inventory.

To bring the technical inventory works to uniformity Album of the symbols used for a technical inspection of the real estate for the purpose of definition of technical characteristics for the registration of the rights to the real property and transactions with it has been developed and confirmed by the order of the Chairman of the Committee of registration service of the Ministry of Justice of the Republic of Kazakhstan of September, 21, 1999 of No. 202/1. While drawing up of technical passports experts have to strictly adhere to symbols of building materials and colour palette. In the Album there are examples of graphic materials of buildings and works, an external accomplishment, engineering structures and pipelines and networks used for the technical inventory.

To define depreciation of buildings and works experts have to follow the Rules to define depreciation of the real property affirmed by the order of the Chairman of the Committee of registration service of the Ministry of Justice of the Republic of Kazakhstan of April 17, 2000 of No. 70.

In the practice technical inventory experts while defining a physical depreciation have to make a conclusion about accident or dilapidation of buildings and works, i.e. about their unfitness. The Rules to define unfitness of dwelling houses and residential premises for constant residence affirmed by the order of the Chairman of the Committee of registration service of the Ministry of Justice of the Republic of Kazakhstan of May 25, 1999 of No. 97, establish the attribution order of buildings to the unfit category. While making technical inventory works experts should follow the Rules on labour protection for the technical inspection of the real estate, affirmed by the order of the director of the Agency on registration of real estate and legal entities of the Ministry of Justice of the Republic of Kazakhstan of No. 124 of August 14, 1998.

The significance of the technical inventory for the state needs is difficult to overestimate; it is made with a view of finding presence, structure, a technical

condition of the real estate, as for a statistical reporting, so further on for formation of tax levies, utility payments.

Technical inventory works allow tracing unauthorized constructions and various replannings without the permission of bodies of architecture that may damage buildings.

Technical characteristics are the factor by which it is possible to distinguish one real property from another. Therefore exact (documentary) reflexion of technical characteristics is of great importance for registration system.

The availability of a technical document at the possessor of the right where all technical characteristics are reflected is an obligatory condition of registration. The technical document for the real estate object is a plan of the land lot, the plan and (or) a technical passport of primary or secondary object of the real property, containing necessary identification characteristics of the real estate object. The indispensable condition of registration of the rights to primary and secondary objects is drawing up of technical passports on them. The technical passport of primary and secondary object is stored in registration files of corresponding real estate objects.

Technical inventory materials are used:

- during a capital construction for working out of regional planning schemes, comparison of development variants by criterion of cost of demolished structures, workings out of projects of striping of foundation ditches, planning of reproduction of available housing, quality control of buildings placed in operation, of the building executive documentation;

- in a social area to issue permissions to citizens to build dwelling houses and working structures, defining the accomplishment of lands of settlements and structures, the account and distribution of inhabited and uninhabited buildings and premises, an establishment of the facts of unauthorized construction, calculation of the amount of the residential rent and rent payments, definition of suitability of buildings for use on this or another purpose;

- in housing and communal services for planning of works of major repair, for working out of projects and estimates for reconstruction and repair, definition of cost of a fixed assets and their actual depreciation;

- in a financial system to define the taxation of a structure, the state compulsory insurance, calculations of indemnification for taken down structures.

Objects of a technical inventory, classification of buildings, constructions and premises.

An inventory object as a registration unit is characterised by following inherent signs:

1) Unity and continuity of territory. The area of the land lot (territory) allocated for operation of an object is one of characteristics of an inventory object and is not the independent object of the account.

2) Presence of the main structure, for purposes of construction or operation the parcel of land has been allocated.

The inventory object without the main structure is not formed, since in legal respect the main structure is considered as the main thing.

The structure of inventory object can include several main single-purpose structures (trading buildings, administrative buildings etc.).

The main structure can be the adjacent structural part of a building separated from other structural parts by physical borders (wall, deformative and sedimentary commissure) thus this part demolition will not change adjacent

structural parts and their functional purpose. If the part of a building does not meet these requirements, to separate it as an individual inventory object it is necessary to develop the project and to perform the corresponding construction work, allowing a physical separation.

Symbolic division of structurally uniform building into two main structures is incorrect.

1) Unity of possession. The set of legal and physical persons, responsible for a technical condition and observance of technical norms of operation, are considered as the single person, relations between whose participants are regulated by law or a contract.

2) Concreteness of purpose. When we deal with multipurpose the set of functions is considered as the single unit (for example, a premise having a bathroom, a kitchen, a toilet, a lobby and rooms to sleep and have a rest is classified as single-purpose premise - inhabited apartment).

The inventory object is formed by unity of its structural (construction) and functional parts.

The inventory object is defined by its borders and structure. Borders are subdivided on physical and symbolic. A physical border - artificial construction (fence, wall, overhead cover), separating functional volumes or areas from each other.

The border is equated to a physical one if in ruptures between its structural components the direction of the boundary line set by planes, lines or the set of physical spots, does not raise doubts. So, if there are landmarks in the form of columns in outline (turning) points of border of the land lot and assuming the straightness of a line of border between columns the border is equated to a physical one. Otherwise the border in ruptures becomes symbolic. According to the degree of



match of symbolic and physical borders they are subdivided into standard and actual ones.

The standard border is defined by the set of the signs specified in legislative or normative documents (project, land allotment documents, court decision and others). Standard borders are reflected in inventory and technical documents without fail, both physical and symbolic. If there are disputes among owners about borders then a physical or symbolic border becomes disputable, that must be reflected in inventory plans by text entry and symbols.

Actual borders are changeable are fixed in inventory and technical documentation (both physical and symbolic) at the certain date of inventory. The structure of structures and constructions of an inventory object, and also structure of premises included into the main structure, is reflected in the inventory documentation according to the purpose specified on drawings on which basis the decision on object acceptance in operation was made.

Ranking a certain object as belonging to one or another class of buildings and works by a functional purpose is made according to RDS RK 07-01-97 “Methodical instructions for creation and keeping of the state town-planning cadastre of the Republic of Kazakhstan”.

If there are any disputes among co-owners about the purpose of converted structures (premises) then a classification is established on the basis of requirements of current construction norms and rules.

Classification of separate structural and functional parts of buildings and works by importance of their use for this or that purpose (basic area, an auxiliary area, etc.) is not the task of a technical inventory.

Classification of outbuildings and constructions (properties) which are a part of an inventory object is made similarly to the classification of buildings and works by the parts list included in executive or inventory documentation on which basis the decision on acceptance in operation was made.

The classification of structural parts and single-purpose elements (i.e. having only one functional property, such as fencing, a well, and a dump well, a cellar, basement, a wall, etc.) is made by experts independently.

If there is no such parts list the classification is made by analogy with the one of structures and constructions.

The classification of buildings, constructions, structures, premises and rooms by actual use is not the technical inventory task.

The control of users is carried out by supervising bodies (main architect service, sanitary and epidemiological station, tax inspectorate, etc.) or by the proprietor.

The use of buildings and premises for one or another purpose, except the one established by norms, is not reflected in inventory and technical documents.

Qualifying requirements to an expert making a technical inventory of the real estate.

It is necessary to consider that inventory materials are widely used in a whole number of economy branches and it is necessary to achieve a reliable, qualitative, qualified description of an object.

Inspection of building structures, their technical description and depreciation definition - difficult and vital part of work of technical inventory. Defining the cumulative depreciation rate demands from the executor a corresponding qualification and objectivity. It is necessary to distinguish priority factors forming cumulative depreciation in a structure. One should remember that decoration work and furniture of residential premises can veil the actual condition of a structure.

### **13.4 The basic concepts used during a technical inventory**

#### *General provision*

1. Rules establish only an order of carrying out of a technical inspection of real property objects, the rights to which are subject to obligatory state registration according to the Republic of Kazakhstan legislation.

2. The technical inspection objects are:

- residential buildings of constant and temporary residence;
- buildings of public education establishments;
- buildings of health-care agencies, social maintenance and sanitation purposes;
- physical training and sport facilities;
- buildings of culture and art establishments;
- buildings of trade enterprises, public catering and domestic service;
- buildings and works of organisations and establishments of administration, of scientific, design, bank, insurance, business, public and communication;
- religious constructions;
- industrial and production buildings and works;
- storage constructions;
- public utilities;
- transport constructions and works;
- constructions of pipelines and networks;
- garages;
- dacha and garden constructions;

- other main constructions;
- utility constructions and works.

3. Defining technical characteristics of the real property object includes drawing up:

- plan of the land lot with actual borders and drawing of structures and constructions;
- floor plans of the main structures located on an area, and auxiliary buildings;
- technical description of structural elements of all structures and constructions located on an area along with defining their technical condition;
- performing calculation works and entering of results of inspection in technical passports on the real estate objects which are used further for filling of registration sheets when keeping “Legal cadastre”.

4. The technical inspection of real estate objects is carried out on the basis of the statement of the proprietor of the real estate object (or other possessor of the right) if other is not provided by the legislation, and made without prior arrangement.

5. The payment for a technical inspection of the real property objects is made by legal or physical persons in whose interests the mentioned actions are made.

6. Works to define technical characteristics are divided: on a basic inspection and a current inspection of the real estate objects.

The real property objects are subdivided into three categories of complexity:

- first category of complexity includes rectangular form structures in the plan with single-type layout of floors and simple constructive scheme;
- second category of complexity includes structures composed of two or three rectangles in the plan with different layout of floors, constructive scheme and architectural design.
- third category of complexity includes structures composed of more than three rectangles, rhombuses or curvilinear structures in the plan with complex constructive scheme and architectural design.

The parcel of land survey and drawing of a schematic plan for a land lot (field and office work)

The area intended for construction and service of structures, constructions and isolated in legal, territorial and economic regards from adjacent areas by certain borders is subject to the survey.

Considering the decrease of financing on service and repair of objects of water supply and sewerage we will briefly discuss the inventory of similar objects.

## CONCLUSION

As conclusions one should notice, that by results of the conducted research it is possible to make following conclusions:

1. The approach offered in the work to management of the commercial real estate objects is based on the analysis of administrative decisions from the point of view of the object investment appeal.

2. The situation analysis in the market of the commercial real estate allows arriving at the conclusion on heterogeneity of qualitative characteristics of objects. In view of it, it is expedient to reduce numerous characteristics to one integrated indicator of investment appeal.

3. One has established that the indicator of investment appeal is actively studied in economy for variety of objects (countries, regions, branches etc.) Investment appeal to the investor is an important economic category while choosing an object of investment. In particular, it concerns the commercial real estate objects.

4. The controlling mechanism has been developed for methodical support of the offered approach to management of the commercial real estate objects. The structure of controlling mechanism has been defined on the basis of research and systematization of existing controlling mechanisms presented in the special economic literature.

5. The author proposes the quantitative assessment algorithm of investment appeal of the commercial real estate on the basis of scores of qualitative characteristics and with account of the corresponding weight of each characteristic determined by expert way.

6. The work algorithm of controlling mechanism of the commercial real estate object should include certain measures. Such measures are established on the basis of studying of the market with revealing of the consumer characteristics, influencing the return, brought in by the real estate. The choice of taking of each measure should be analyzed taking the efficiency of investment appeal growth into account. It will allow defining sequence of measures, proceeding from the developed conditions, the purposes of the proprietor (or the management company) and possibilities to finance them.

7. One has substantiated, that management of the commercial real estate objects it is expediently and possible to carry out on the basis of the investment appeal analysis.

8. The management of the commercial real estate objects on the basis of investment appeal of investment is urgent for a lot of tasks: attraction of means for an object development, increase of its profitability, object sale in the market. The presented analysis can be useful to the activity of following organisations too -

participants of the real property market, namely: for the development companies, appraisal firms, lending agencies etc.

The offered mechanism allows managing efficiently the commercial real property object.

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