

TO: Clients and Friends of the Firm  
FR: Frishberg & Partners  
RE: Basic Steps Towards Land Ownership

On October 25, 2001, a new Land Code of Ukraine (the “Land Code”) was adopted and came into effect on January 1, 2002. In general, the Land Code is intended to facilitate the development of the real estate and land market in Ukraine. And, surprisingly, it actually has led to some long-awaited changes and sighs of relief.

The first, and probably most important change, is that land in Ukraine may be privately owned. Of course, the Land Code has retained the archaic, socialistic notions of communal and state ownership. Another provision of the Land Code stipulates that ownership rights to land are now acquired and realized on the basis of the Constitution of Ukraine and the Land Code. This is another step confirming that it is not a crime to be a proud owner of land.

Article 657 of the Civil Code of Ukraine (the “Civil Code”) clearly states that agreements involving the sale of land must be notarized and are subject to state registration. Accordingly, failure to comply with the requirement to notarize and register a land sale-purchase agreement may render such agreement null and void. Agreements involving the sale, exchange and gift of land in all cases are subject to notarization at the location of the land plot in question and such agreements are of equal legally binding force and effect regardless of whether a state or a private notary certifies the agreement.

With respect to the sale of land, prior to visiting a notary, the seller must prepare a number of documents, which are required for the proper processing and execution of the sale-purchase agreement. Notably, the right to dispose of land plots, and specifically, to enter into sale, exchange and/or gift agreements belongs exclusively to the owners of such land plots. Pursuant to this presumption, the notary will require the seller to present the relevant state act confirming his or her ownership rights to the land plot according to Article 126 of the Land Code. Any other documents evidencing ownership rights, such as a decision of a local council on the allocation of a land plot, will not be accepted by a notary.

Further, the notary will be required to verify the existence of any liens and other encumbrances on the land plot offered for sale. A notary receives this information from the Unified Register of Liens to Immovable Property, which accumulates such data from all over the nation. Should the notary find out that a lien is imposed upon a land plot in question, it will refuse to certify the sale-purchase (gift, exchange) agreement.

In case a spouse has acquired a land plot during marriage, written consent from the other spouse will be required in order to alienate the land plot. As an exception, however, such consent will not be requested if the land plot was acquired via privatization.

In order to process and execute certain land-related transactions, an official appraisal of the land plot by a licensed appraiser may be required, and the results of such appraisal must be compiled in an appraisal report. The general legal issues governing the value of the land are regulated by the Civil Code, the Land Code and the Law “On Appraisal of Land,” dated December 11, 2003 (as amended) (hereinafter the “Appraisal Act”). In general, both Codes state that the sale of a land plot is executed at the price agreed upon by the parties. Please note, however, that other specific requirements are provided in the Appraisal Act and related regulations approved by the Cabinet of Ministers of Ukraine.

Notarization of an agreement to alienate land is subject to state duty, which in most cases will amount to one (1) percent of the value of the agreement. In cases when the value of the agreement has been intentionally decreased by a party and is lower than the value stipulated in an appraisal report issued by the state land management bodies, the state duty will be calculated on the basis of the larger value.

Interestingly, upon the certification of land-related agreements by a state notary, rather than a private notary, any provision of legal services by the state notary, such as the drafting of a proper agreement, is free of charge. The parties to the agreement simply reimburse to the notary the value of the special blank form (currently seven (7) Ukrainian Hryvnias) on which the agreement is set forth in writing, as well as the value of the verification service with the relevant register with respect to liens and encumbrances (currently thirty-four (34) Ukrainian Hryvnias).

On the other hand, private notaries will not charge the state duty. The amount payable to a private notary is set according to an agreement reached between the parties to the land-related agreement and the corresponding private notary. However, a private notary should not, and in most cases will not, charge less than the minimum amount of the state duty for its services.

In purchasing land, one should clarify the designated usage “assigned” to the land plot, as land may only be used in compliance with its purpose (e.g., farming, industrial, residential, etc.). It is possible to apply for a change of the land’s designated purpose (zoning). This change, however, usually tends to be rather expensive and extremely time consuming, especially with respect to a change from non-commercial to commercial or agricultural to non-agricultural designation.

Notably, the Land Code sets forth several direct prohibitions with respect to the sale or purchase of land. For the most part, foreign citizens, as well as foreign legal entities, are discriminated against under the Land Code. Specifically, agricultural land may not be transferred for direct ownership to

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