

TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Commercial and Residential Real Estate

I. Introduction

Ever since 1991, foreigners have routinely purchased all kinds of real estate. Some acquired large communal apartments for personal use while others converted them for office use. Still others purchased free-standing buildings and have obtained that coveted “free and permanent use of land” thereunder. In other words, the real estate market in Kiev has been active for a long time.

In the early years of 1991-1996, only three Western-quality residential and commercial properties existed: Maculan, Regina Center and Kiev-Donbass. Each charged near-extortionate fees ranging from \$65 to \$85 per square meter per month, and used their monopoly positions to lock up multi-national companies in leases for up to 5 years. Competitors quickly followed in their steps, often demanding an up-front 6-month rent payment, typically wired to an offshore company. Then the regional economy crashed, rather abruptly, in early August of 1998. Many foreign lessees, including those unfortunate multi-national companies who locked in early at unreasonably inflated rents, tried to renegotiate their rent rates, and many succeeded.

Today, despite increased availability of quality residential and commercial properties, the prices continue to rise for both commercial and residential property. Another thing, which has remained consistent in the ever-changing Ukrainian real estate market, is legislation, which expressly allows foreigners to purchase real estate. Below we discuss the fundamental issues involved in acquiring real property in Ukraine.

II. Documents Confirming Property Title and Lessor’s/Seller’s Identity

In all cases involving real estate (purchase or lease), questions of security in the property’s title and ownership rights predominate the agenda, frequently causing a great deal of confusion and distrust. The reason is quite simple: fraudulent transactions are abound and, as a consequence, all issues connected with title transfer and the identity of the true owner must be flushed out before the actual execution of a sale-purchase (or lease) agreement in front of the relevant officials (notary public or commodity exchange).

In the past, gullible companies incurred significant financial losses after effectuating substantial pre-payment (up to 6 months of the lease price) to false lessors only to find that their newly-leased premises actually belonged to an innocent third party. Other cases involved premature termination of poorly drafted lease agreements (often following repairs at the lessee's expense). Of course, recourse to the law has minimal, if any, effect on reimbursement of the expenses or provisions for alternative office space.

To avoid the various pitfalls, any potential purchaser or lessee must insist on reviewing the background documentation, which serves as the ultimate proof of ownership. The various documents include:

1. sale-purchase agreement, gift agreement or privatization certificate for the property;
2. the "technical characteristic" certificate from the Kiev City Bureau of Technical Inventory; and
3. a certificate from the Kiev City Notary Public that the property is not secured by collateral or subject to encumbrances (i.e., it has no liens or arrests placed on it).

Other documents may be necessary, such as a waiver of a spouse's or children's rights to the property. In case the alleged owner is a legal entity, the seller's foundation documents, among other documents, are most helpful. Of course, if the alleged owner is a natural person (individual), his or her passport must be verified.

Various excuses, such as lost documents necessary to confirm ownership rights, or that a particular document original is somehow inaccessible, is an indication of a potential problem. Contrary to a popular misperception, property ownership records are kept in meticulous order somewhere in the state archives.

All of the above documents should contain the relevant seals of the state authorities, and should be collected within 3 months from the date of their presentation for professional review. Based on these documents, a legal opinion will be drafted, confirming or rejecting the ownership rights to any given property.

A title search, however, is only a part of the chain of legal dilemmas surrounding procurement of property. The supporting legislation concerning currency regulations and taxation can also play a large role in deciding the best way to structure real estate transactions and secure long-term possession and quiet enjoyment of premises.

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