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# **RESTRICTIONS OF RIGHTS OF NONRESIDENTS TO LAND IN THE RUSSIAN FEDERATION.**

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Regulatory acts on this issue:

- 1) Forest Code of the Russian Federation dated January 29, 1997 No. 22-Φ3.
- 2) Water Code of the Russian Federation dated November 16, 1995 No. 167-Φ3.
- 3) Land Code of the Russian Federation dated October 25, 2001 No. 136-Φ3.
- 4) General provisions on lease (chapter 34 of part two of the Civil Code of the Russian Federation).
- 5) On legal status of foreign citizens in the Russian Federation. See Federal law dated July 25, 2002 No. 115-Φ3.
- 6) Federal law "On circulation of agricultural lands" dated July 24, 2002 No. 101-Φ3.
- 7) Ruling of the Constitutional Court of the Russian Federation dated April 23, 2004 No. 8-П.
- 8) Law of the Russian Federation "On mineral resources" dated February 21, 1992 No. 2395-1.
- 9) Law of Primorsky region dated December 29, 2003 No. 90-K3 "On regulation of land relations in Primorsky region".
- 10) Resolution of Vladivostok City Administration dated November 08, 2000 No. 2054 "On approval of "Interim regulation on the procedure of granting and withdrawal of lands and termination of rights to land in the city of Vladivostok".
- 11) Letter of the Committee for Land Resources and Land Management of Primorsky region dated December 17, 1996 No. 18/605/01-12 "On lease of plots of land".

Restrictions of rights to plots of land provided by the effective legislation are rather various. Forms of their establishment are very specific. As this takes place, interpretation of restrictions of rights to land in different branches of the legislation is ambiguous. Federal laws establish restrictions of rights to land with the purposes of:

- preserving natural objects or monuments of history and culture;
- creating necessary conditions to carry out economic and other activity;
- operating industrial, transport and other objects and communications;
- protecting human life and health etc.

A variety of the purposes results in that restrictions of rights to land are determined in federal laws related to the most different branches of the legislation.

One federal laws establish a legal regime of lands which imposes the obligation on the holder of the right to observe the certain requirements. Other federal laws contain lists of obligations of persons using plots of land. There are federal laws which limit the circulation of plots of land or allow encumbrance of property rights to land by certain obligations. There are also federal laws which demand from the holders of the rights to land to fulfill various technical requirements, for example, Construction Norms and Specifications or Sanitary Norms and Specifications.

Among federal laws on restrictions of rights to land we may conditionally specify the acts containing the norms:

- 1) on circulation capacity of plots of land;
- 2) on legal regime of lands;
- 3) on obligations of proprietors of plots of land, landowners and land users.

Article 27 of the Land Code of the Russian Federation lists the plots of land withdrawn from circulation:

- within the territories of state natural reserves and national parks, except for plots of land within the borders of national parks transferred to citizens and legal entities to ownership or on other rights in accordance with federal laws;
- occupied with buildings, structures and facilities where the Armed Forces of the Russian Federation, troops of the Border Service of the Russian Federation, other forces and military units and bodies are placed for constant activity;
- occupied with buildings, structures and facilities where military courts are placed;
- occupied with objects of organizations of federal security service;
- occupied with objects of organizations of federal state protection bodies;
- occupied with objects for using atomic power, stations for storage of nuclear materials and radioactive substances;
- occupied with objects in accordance with activities of which closed administrative and territorial entities are established;
- granted to corrective and labor institutions and treatment and labor sanatoriums of relevant law-enforcement agencies;
- occupied with military and civil burial places;
- occupied with engineering and technical facilities, communication lines and the communications erected in the interests of protection and security of the State border of the Russian Federation.

In accordance with article 22 of the Land Code of the Russian Federation the plots of land *withdrawn from circulation* may not be leased, except for the cases established by federal laws.

The following plots of land are limited in civil circulation:

- within specially guarding natural territories, except for those withdrawn from circulation;
- within the forest stock, except for cases established by federal laws;
- occupied with water objects state – or municipal-owned, except for separate water objects;
- occupied with especially valuable objects of cultural heritage of the peoples of the Russian Federation, objects included into the List of the world heritage, historical and cultural reserves, objects of archeological heritage;
- plots of land allotted for the security of defense and safety of defense industry, customs needs, except for those withdrawn from circulation;
- within the borders of closed administrative and territorial entities, except for those withdrawn from circulation;
- plots of land allotted for needs of transport organizations, including sea and river ports, railway stations, airdromes and airports, facilities for navigation support of air traffic and shipping, terminals and terminal complexes in the zones of the formation of international transport corridors;
- plots of land allotted for communication needs;
- occupied with objects of space infrastructure;
- located under objects of hydraulic structures;
- allotted for the production of poisonous substances, narcotics;
- contaminated by dangerous waste products, radioactive substances, and lands undergone biogenic pollution, others lands undergone degradation.

Plots of land *withdrawn* from civil circulation are in exclusive federal ownership, and plots of land *limited* in civil circulation are in federal ownership, ownership of entities of the Russian Federation and municipal ownership.

The right of ownership to the said plots of land may not be acquired by citizens and legal entities. Only in cases stipulated by federal laws, the plots of land limited in civil circulation is permitted to be transferred to private ownership.

Restrictions of rights to land connected with the observance of a legal regime of lands are established by the Land Code of the Russian Federation, City-planning Code of the Russian Federation, Federal Law "On medicinal natural resources, medicinal and health-improvement areas and resorts" and other legislative acts, the number of which as legislative practice shows irrepressibly grows.

The legal regime of lands is established proceeding from their belonging to one or another category and permitted use in accordance with the zoning of territories (sub-item 10, item 1, article 1 of the Land Code of the Russian Federation). Thus, when it is mentioned about the regulation of issues of the legal regime of lands, we must be aware of the provisions of the legislation related to division of lands into categories and provisions on the zoning of territories.

The basis for placing the lands into certain categories is their designated purpose. Using this criterion the Land Code of the Russian Federation (article 7) specifies the following land categories:

- agricultural lands;
- lands for settlements;
- lands of industry, power engineering, transport, broadcasting, communication, television, information science, lands for provision of space activity, lands of defense, safety and lands of other special purpose;
- lands specially guarding territories and objects;
- lands of forest stock;
- lands of water stock;
- lands of reserve.

For each category of lands a certain legal regime is established which is expressed as full or partial prohibition to carry out one or another activities on the lands, as granting a priority opportunity to use the lands for specific needs, as establishing special conditions of the use of the lands etc.

For example, the lands of specially guarding territories and objects should be used for ecological, scientific, historical and cultural and other similar purposes, and the agricultural lands should be used for needs of agriculture.

Possession, use and disposal of the lands without regard for their designated purpose and permitted use are recognized to be infringement of the legislation which may result in termination of rights to the land.

Article 15 of the Land Code of the Russian Federation secured the right of ownership and article 22 granted the right to lease the plots of land to foreign persons, stateless citizens and foreign legal entities. The rights meet

the principle of granting a national treatment to foreign citizens and stateless citizens proclaimed by the Constitution of the Russian Federation.

The national treatment means that foreign citizens and stateless citizens enjoy the rights in the Russian Federation and bears obligations on equal terms with citizens of the Russian Federation. Thus, foreigners in the Russian Federation territory have the same rights as citizens of the Russian Federation, including in respect to the right to land.

Restrictions of this principle may be established only by federal law or international agreement. Thus, the Land Code contains some restrictions *of the right of ownership* of foreigners to the land. For example, foreign citizens, stateless citizens and foreign legal entities may not have plots of land as ownership which are located within the boundary territories the list of which is established by the President of the Russian Federation, and within *other special* territories. It should be noted that the said list is not approved by the President yet. This fact gives grounds for disagreements as there is an opinion that until the list of the boundary territories is established no lands may be transferred to foreigners to ownership.

While the Constitutional Court of the Russian Federation by its Ruling No. 8-П dated April 23, 2004 established that foreign citizens, stateless citizens and foreign legal entities have the right to acquire the lands outside of such territories. The documents of cadastral registration represented for registration of rights to the plots of land should specify the boundary zones. If such documents do not contain a record of the availability of the boundary territory the plots of land may be executed for ownership to foreigners.

Previously, the Land Code restricted the time-limit for lease of the plots of land - 49 years. The new Land Code does not provide a time-limit for lease. Such restriction remains valid for agricultural lands. The lands of this category may be granted to foreigners only as the right to lease. As this take place, the term of lease contract of such lands may not exceed *forty nine years*. And if the contract of lease of the plot of land is concluded for more than one year, the contract is subject to obligatory state registration.

Also the plot of land may be leased out for state or municipal needs or for carrying out *of prospecting operations* for the period of not more than one year.

In accordance with article 31 of the Forest Code a site of forest stock may be granted for payment for the period from one year till ninety nine years.

In accordance with article 42 of the Water Code water objects may be transferred to short-term use up to 3 years and long-term use – up to 25 years.

Article 10 of the Law on mineral resources differentiates the time-limits depending on the purposes of use:

- up to 1 year - for extraction of minerals on the basis of granting the short-term right to use sites of mineral resources;
- up to 5 years - for geological survey;
- up to 25 years – in the event of combination of various kinds of use;
- up to 25 years - for extraction of underground waters;
- for extraction of minerals - for the term of working-off a mineral deposit calculated on the basis of feasibility study of the development of the mineral deposit which provides a rational use and protection of minerals;
- without limitation of the term there may be granted the sites of mineral resources for construction and operation of underground structures not connected with mining operations; construction and operation of underground structures connected with burial of waste products; construction and operation of oil and gas storage facilities, as well as for the formation of specially guarding geological objects and other purposes.

Restrictions of rights to the land depend on whether the plots of land are within the territorial zones (specially guarding territories, protective, sanitary, restricted and other zones) which are allotted in territory zoning.

So the plots of land in the structure of zones of agricultural use in settlements are used for keeping agricultural production up to the time of change of a kind of their use in accordance with general plans and rules of land management and development of settlements.

Thus, in spite of the fact that foreigners are provided with the national treatment in the Russian Federation territory, including, in respect to the right of ownership, some restrictions are available nevertheless.