

Cadastral Value: FAQ and What's New in the Law

Newsletter

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In 2016, the rules for determining cadastral value changed. The changes consisted, on the one hand, in the suspension of provisions of the Federal Law “On Appraisal Activities” that previously regulated the procedure for state cadastral appraisal (hereinafter, **SCA**),¹ and, on the other, of the adoption of the Federal Law “On State Cadastral Appraisal”.²

Thus, at present and till the end of 2019, cadastral appraisal and other related matters are and will be regulated by the Federal Laws “On Appraisal Activities in the Russian Federation” and “On State Cadastral Appraisal”.

Below, we answer the most frequently asked questions concerning the determination and application of cadastral value.

1. WHAT IS CADASTRAL VALUE?

Cadastral value is the value of a property established under the statutory procedure as a result of conducting state cadastral appraisal. Why “cadastral”? The reason is that traditionally, this value will be stated in a real estate cadastre (previously – State Cadastre of Real Estate; at present, that cadastre forms a part of the Unified State Register of Real Estate (USRRE)) for each property.



Cadastral value is essentially a conventional calculation rate reflecting the property's value for public law purposes.

The key difference between cadastral value and market value is that cadastral value is calculated for several properties of the same type based on a number of pre-determined parameters, while the market value is determined individually for each property and includes an unlimited number of factors affecting the property’s price. Calculation of the market value for hundreds of thousands of properties would require too many resources; hence, based on a number of rules with respect to more or less similar properties, the state will set forth a conventional value – the cadastral value. However, in case of disputes, the laws effectively give the priority to the market value.

Cadastral value is used for the following purposes:

- ▶ buyout of land plots and properties for public purposes;
- ▶ land tax calculation;
- ▶ property tax calculation;
- ▶ calculation of rent for land plots in state/municipal ownership;
- ▶ miscellaneous.

2. WHAT FACTORS AFFECT A PROPERTY'S CADASTRAL VALUE?

The main factors here are:

- ▶ the average market price for analogous properties;
- ▶ location;
- ▶ the time of construction and the extent of wear and tear of the building (for premises);
- ▶ the permitted use of lands and quality of soil (for land plots);
- ▶ the level of economic development of the territory in question; the availability or absence of utilities;
- ▶ other factors affecting fluctuations in the property's value.

3. WHAT CHANGED IN 2017?

From the standpoint of legislation, 2017 was marked by the following changes (please note that not all of these changes have become effective in practice by now – see para. 9 below for more details):

▶ **The definition of cadastral value:**

- *Before 2017* (Federal Law “On Appraisal Activities in the Russian Federation”): cadastral value is the value of a property determined in the course of cadastral evaluation or litigation on the results of determination of cadastral value;
- *From 2017* (Federal Law “On SCA”): cadastral value is the value of a property determined in accordance with the procedure set forth by statute, as a result of conducting SCA.

▶ **Who conducts cadastral appraisal:**

- *Before 2017*: independent appraisers who won a tender;
- *From 2017*: budget-funded institutions specially created in each constituent entity of the Russian Federation.

▶ **Frequency of appraisal:**

- *Before 2017*: No more than once in every 3 years (2 years for Moscow, Saint-Petersburg and Sebastopol);
- *From 2017*: No more than once in every 3 years (2 years for Moscow, Saint-Petersburg and Sebastopol), but at least once in every 5 years.

Challenging the results of cadastral appraisal:

- *Before 2017:* With a specially created Rosreestr commission or in court (addressing the commission first being mandatory for legal entities).
- *From 2017:* With a commission (if created in the respective constituent entity of the Russian Federation) or in court. Addressing the commission before going to court is not mandatory.

Cases on challenges of the cadastral value are examined under the rules of administrative judicial procedure (pursuant to the Administrative Justice Code, **AJC RF**) in the courts of the relevant constituent entity of the Russian Federation.



Starting from 2017, pre-trial settlement with a commission is no longer required for legal entities in case of submitting to court.

The list of documents for applying to the commission:

- *Before 2017:* extract from the USRRE on the cadastral value of a property; copy of the document of title/evidence of title for the property; report on the appraisal of market value in hard or soft copy (as an electronic document); an expert report verifying the appraisal report.
- *From 2017:* the same document, except that there is no need to submit the expert report verifying the appraisal report.



Starting from 2017, the list of documents to be submitted to the commission has become shorter.

The rules for determining the cadastral value:

- **From 2017 through 2019:** the cadastral value effective as of January 1, 2014 or at a later date (if lower than the former), shall apply. That is, if the cadastral value established, for instance, in 2016, is lower than that in effect as of January 2014, the 2016 cadastral value shall apply; if greater – the 2014 value shall apply.
The above rules for determining the cadastral value shall apply only to those results of SCA that were received in accordance with the Federal Law “On Appraisal Activities in the Russian Federation”.

What’s new from 2017:

- **Conducting a new SCA:** If the real estate market indices fall by more than 30% as compared to the previous quarter of the same year, or where the cadastral value is challenged and determined in the amount equal to the market value for more than 30% of properties in one constituent entity of the Russian Federation, that constituent entity will be required to conduct an extraordinary cadastral value appraisal.

4. PROCEDURE FOR CONDUCTING STATE CADASTRAL APPRAISAL

Starting from the year 2017 (but please note the transitional provisions in para. 9 below), SCA shall be carried out by a specially created budget-funded institution under the decision of an executive authority of the constituent entity of the Russian Federation, and shall include the following procedures:

- ▶ Deciding to conduct SCA;
- ▶ Determining the cadastral value and preparing a report on the results of SCA;
- ▶ Approving the results of determination of the cadastral value.



As a result of SCA conducted in Moscow in 2016, the cadastral value of real property has been determined for the years 2017 and 2018.

The powers of budget-funded institutions include:

- ▶ Conducting the cadastral appraisal;
- ▶ Providing explanations related to the determination of cadastral value;
- ▶ Examining applications for the correction of errors made during the determination of cadastral value;
- ▶ Collecting, processing, arranging and accumulating information necessary to determine cadastral value (including the real estate market data), as well as the information used to conduct SCA and formed as a result of conducting the same;
- ▶ Independent correction of technical and methodological errors (based on applications by interested parties) made in determining cadastral value, that will exclude the need for owners to apply to the Rosreestr commission or a court.

5. WHO MAY INITIATE SCA?

SCA is carried out on the initiative of an executive authority of the relevant constituent entity of the Russian Federation.



The owner or tenant of a land plot may not initiate the procedure of state cadastral appraisal on their own.

The law **does not envisage a mechanism** for carrying out the determination of cadastral value (SCA) on the initiative or application of the owner of the property (*e.g.*, a land plot) with respect to a specific property. The owner may, however, in any event file an application with the regional directorate of Rosreestr requesting that the property be included in the scope of the next scheduled SCA.

6. WHAT CAN BE DONE IF A LAND PLOT'S CADASTRAL VALUE HAS NOT BEEN DETERMINED?

There are cases where the cadastral value of a land plot would be undefined. In such cases, the calculation of rent or redemption value used to be carried out with the use of the so-called **normative price** – a parameter characterizing the value of the land plot of a certain quality and location based on the potential income for the payback period.

The normative value of land is determined annually by the executive authorities of the constituent entities of the Russian Federation for lands of various permitted uses and shall not exceed 75% of the market price level. District (city) committees for land resources and land management are in charge of issuing documents on the normative price for land with respect to specific land plots to all interested parties.

However, Art. 3(13) of the Law “On the Enactment of the Land Code”,³ that previously served as the statutory ground for applying the normative price of land in cases where the cadastral value had not been established, **ceased to be in effect from March 1, 2015**. Thus, the legislation currently contains a gap as to which analogue of cadastral value should be used in a situation where it had not been set.

In practice, for instance, in some cases it will be the cadastral value of neighbouring land plots that will be used, or the normative price for land – however, there is no consistent trend in court practice, there exist risks of the mechanism of calculation of redemption price or rent employed being challenged, etc.

7. CHALLENGING THE RESULTS OF SCA

The results of determination of cadastral value may be challenged in a commission (in case one is created in the respective constituent entity of the Russian Federation) or in a court; approaching a commission before addressing a court is not mandatory either for individuals or legal entities.

Grounds for the revision of the results of determination of cadastral value are as follows:

- ▶ Unreliability of data on the property used to determine its cadastral value;
- ▶ Determination of the property's market value as of the date, as of which its cadastral value was determined.

Furthermore, one may go to court with a claim challenging the decision, action or omission of the commission.

8. CAN ONE RECOVER LEGAL COSTS FOR CHALLENGING THE CADASTRAL VALUE?

In general, legal costs may also be recovered as a result of challenging the cadastral value in court, although courts usually decrease their amount.

There previously existed a position of the Supreme Court of the Russian Federation reflected in a Resolution of its Plenum,⁴ pursuant to which legal costs could not be recovered from the state

authority as the defendant in such cases if it was passive.

In a recent case of its own, however, the Constitutional Court of the Russian Federation (hereinafter, the **CC RF**) disagreed with that. The CC RF rendered a Resolution⁵ in a case on the verification of conformity to the Constitution of a rule that allowed the court to deny compensation of legal costs to a claimant demanding that the cadastral value of his/her real property was brought to comply with the market value, if the authority acting as the defendant was not challenging such claims and did not object to the market value of the property in question advanced by the claimant.

The CC RF declared that that rule did not comply with the Constitution, since it placed state authorities, as well as those persons who have no need to challenge the cadastral value since it is determined correctly, into a privileged position. The CC RF also mandated the legislators to amend the procedural laws on the allocation of legal costs in cases on the challenging of cadastral value.

The CC RF recognized that the claimant may seek recovery of legal costs in two cases:

- ▶ When the difference between the cadastral and judicially defined market values is so considerable that it may evidence an error in the calculation of the former;
- ▶ When the costs arose other than on the claimant's initiative (*e.g.*, when it is the court that ordered an expert examination to verify the report).



After a successful challenge of cadastral value, you may recover legal costs from the state authority – the defendant.

Nevertheless, the CC RF did not set forth a clear criterion for determining such costs: thus, it did not explain how much the market value should differ from the cadastral value for the claimant to be entitled to a compensation of costs.

The CC RF's position only concerns cases where the state authority was passive in court (the CC RF allowed for the compensation of costs in such a case, too); when, conversely, the state authority is active in court, legal costs may be recovered irrespective of the above conditions (note being taken, however, of the fact that courts tend to lower the claimed amount several times over).

9. TRANSITION PERIOD

- ▶ Starting from January 1, 2017 through January 1, 2020, state cadastral appraisal may be conducted both pursuant to the new Federal Law "On SCA" and under the Federal Law "On Appraisal Activities in the Russian Federation".
- ▶ The decision on the date of full transition to conducting SCA in accordance with the Federal Law "On SCA" will be made by the supreme executive authority of the respective constituent entity of the Russian Federation.
- ▶ Constituent entities of the Russian Federation may choose types of properties and categories of land subject to SCA in accordance with the Federal Law "On SCA" during the transition period.

- SCA and the procedures challenging the results of SCA that commenced prior to January 1, 2017 are subject to the Federal Law “On Appraisal Activities in the Russian Federation”.

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¹ Federal Law No. 360-FZ “On Amending Certain Legislative Acts of the Russian Federation” dated July 3, 2016;

² Federal Law No. 237-FZ “On State Cadastral Appraisal” dated July 3, 2016;

³ Federal Law No. 137-FZ “On the Enactment of the Land Code of the Russian Federation” dated October 25, 2001;

⁴ Resolution of the Plenum of the Supreme Court No. 8 dated June 30, 2015;

⁵ Resolution of the Constitutional Court of the Russian Federation on the verification of conformity to the Constitution of the Russian Federation of a number of articles of the Administrative Justice Code of the Russian Federation, and Art. 110(1) and (2) of the Arbitrazh Procedure Code of the Russian Federation dated July 11, 2017.