

Purchasing Immovable Property from Individuals in Russia: Why Marital Status of the Seller Is Important

Newsletter

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When buying immovable property or shares in a company from an individual in Russia, one should take into account the potential rights of the seller's spouse. Spouses in Russia have common ownership to any assets acquired by either of them while married (unless they have a marriage contract that provides otherwise).

A contract of sale can be challenged in court by the seller's marital partner, if his/her consent had not been received. Whether the buyer was a *bona fide* purchaser (acted in good faith), or not, is irrelevant. This position has been upheld in the latest practice of the Supreme Court of the Russian Federation.¹

Please see the key recommendations on how to protect and secure the position of the buyer in our newsletter below.

1. IF THE SELLER IS AN OFFICIALLY MARRIED INDIVIDUAL

If the seller has informed the buyer that he/she is married, the seller's marital partner should provide a notarized consent on the approval of the sale and purchase agreement. Without such a consent, the entire transaction entails a serious legal risk of being rescinded by a court.



The spouse's notarized consent on the approval of the sale of immovable property is essential if the seller is married.

If the seller and his/her spouse have a marriage contract that expressly provides that particular assets belong to the seller individually, an extract from such a contract can be provided to secure the buyer's position. However, this document does not substitute a notarized approval of a particular transaction.

In certain cases, the notarized approval will not be necessary. This is possible if the seller acquired the property by way of inheritance, or before marriage.

¹ Decision of the Supreme Court of Russia No. 18-KG16-97 (18-KГ16-97) dated 6 June 2016.

2. IF THE SELLER IS PRESUMABLY SINGLE

At present, there is no document in Russia that is viewed as a 100% guarantee that the seller is not married (since there is no unified register of marriages). If the seller claims that he/she is officially single, it is recommended that the buyer take additional measures to check whether the seller might be actually concealing his/her marriage. This will strengthen the buyer's position before entering into the agreement; however, this will not be an absolute remedy in court, if the contract is challenged by the official marital partner.

The following documents can be obtained for such an additional check:

- ▶ **Certificate from the local Civil Registry Office (ZAGS) on the seller's marital status.** Currently, each territorial subject of Russia keeps its own register of civil statuses. Given that the marriage could be registered in any city in Russia, or even abroad, a certificate from the local civil registry office will not be a 100% guarantee of absence of marriage. However, it is recommended that such a certificate be obtained from the Civil Registry Office at least at the location of the seller's residence.

This problem is expected to be solved on 1 January 2018 with the introduction of a unified state register for civil statuses. The register will include all information on the marital status of individuals including marriages registered abroad. This measure will sufficiently mitigate the risks of rescission of contracts due to absence of the spouse's consent.

- ▶ **Notarized statement of single state.** This document can be issued by the seller and certified by the notary public. It contains a statement by an individual on his/her single marital status to be presented to any interested third party. However, the notary certifies only the signature of the signatory after a negligible check of his/her passport, which usually (but not always!) contains a stamp on the registration of marriage. In the case of the Supreme Court of the Russian Federation already mentioned above, the buyer failed to provide such a statement and showed his passport without any stamps on marriage to the seller, but even that did not help a *bona fide* purchaser to save the transaction from rescission.



The concept of 'bona fide purchaser' will not help if no notarized consent of the spouse has been received, according to the Supreme Court of the Russian Federation.

- ▶ **Representations and warranties in the sale and purchase agreement.** The buyer should represent that he/she is not married and undertake to indemnify the seller against any possible damages resulting from rescission (annulment) of the agreement by a court under a claim of his/her marital partner.
- ▶ **Search among pending litigations** for any disputes on divorce or separation of estate between the seller and his/her marital partner. Magistrates (justices of the peace; *mirovoy sudja*) and district courts provide information on pending proceedings and submitted claims on their official websites.

- ▶ **Non-legal measures** (including a check of public information in social networks, private visits and consultations with the neighbors) should also be kept in mind.

3. CONCLUSIONS

The buyer of immovable property in Russia can be secured only by a notarized consent of the seller's marital partner on the approval of the sale of the property.

Some additional measures are required to ascertain that the seller is single – although none of them is enough to save the contract in court if the seller has concealed his/her marriage. From 2018, the situation will improve with the introduction of a unified state register of civil statuses.

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