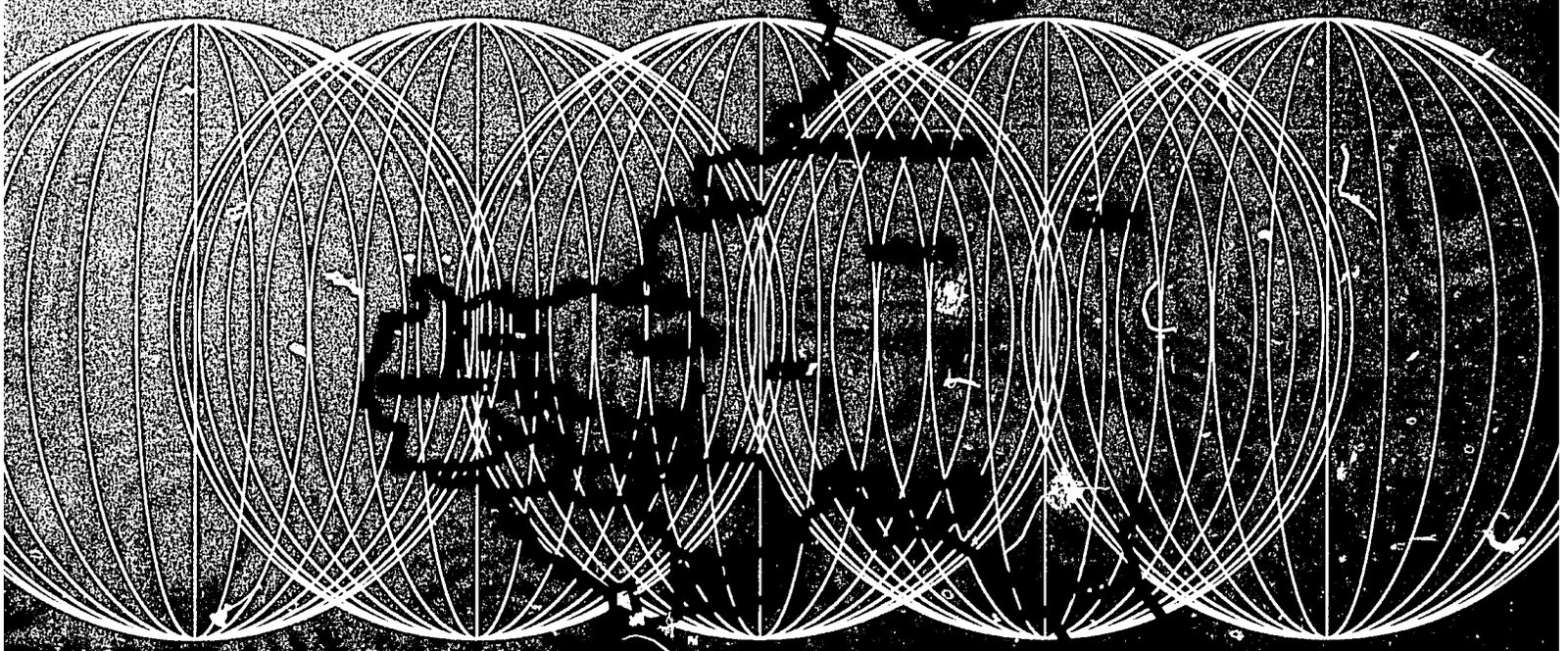
FROM PLANNING TO MARKETS

HOUSING IN EASTERN EUROPE



THE URBAN INSTITUTE
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LEGAL ASSISTANCE TO THE RUSSIAN FEDERATION FOR THE HOUSING SECTOR

TRIP REPORT

OCTOBER 2-24, 1992

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ABSTRACT

This report summarizes the activities of legal advisor Stephen Butler's mission to Moscow from October 2, 1992 through October 24, 1992. The purpose of the mission was to provide legal consultation to various Ministries and legislative bodies of the Russian Federation and City of Moscow regarding development of a legal framework for the housing sector. This report comments on the substance of the various meetings held with Russian Federation and Moscow city officials. Additionally, this report highlights problematic legal issues in the housing sector and offers recommendations for future assistance to resolve of these issues with the assistance of the Urban Institute and the United States Agency for International Development.

An overarching issue in creating a legal framework for the housing sector in the Russian Federation is resolving the substantial level of contradiction and inconsistency in the body of law in place. One of the most complicated legal issues is federal relationships. The current law governing the legal relationship between the federal, state and local governments is the "Federal Agreement." While the Federal Agreement provides a general framework for understanding federal relationships and promulgating federal legislation, other laws exist which impact and potentially contradict the Federal Agreement. Likewise in other areas of the law, laws and decrees have been adopted containing levels of ambiguity or contradiction that are beginning to cause problems. A worthwhile, though substantial, task would be to complete a comprehensive review of the laws applicable to the housing sector and identify the potential areas for conflict among them.

The purpose of this mission was to provide legal assistance to the Russian Federation and the City of Moscow with particular emphasis on establishing laws of condominium ownership, urban planning and mortgage finance. Toward this end, Butler drafted a model form of a condominium law and submitted to the City of Moscow. The law attempts to eliminate the ambiguities and gaps in existing laws on property rights and association governance and provide a workable legal framework for the establishment of condominium associations. Legal assistance in housing finance is focused mainly on assisting the Russian Federation in designing a workable mortgage law. Commentary and guidance has been given to Federation officials on a draft mortgage law. Future plans for technical assistance in this area should concentrate on working closely with private sector institutions to identify legal risks and barriers to developing a comprehensive housing finance system. Urban planning is an area particularly complicated by recent bureaucratic reorganization and issues of federalism. Legal assistance to date has taken the form of participation in a working group drafting a law to expand and clarify a general "principles" law on urban development passed by the Russian Federation in August.

Numerous outstanding legal issues relevant to the housing sector remain. The Russian Federation is currently in the process of designing a housing reform law to encapsulate in one law all the existing law on housing reform. The issues of land ownership and suburban expansion are far from resolved. The progress of these laws should continue to be monitored and opportunities taken to give comments and guidance.

LEGAL ASSISTANCE TO THE RUSSIAN FEDERATION FOR THE HOUSING SECTOR

TRIP REPORT
OCTOBER 2-24, 1992

This report summarizes the activities of the to Russia from October 2, 1992 through October 24, 1992, by Stephen Butler, consulting legal advisor for the U.S. Agency for International Development's Shelter Sector Reform Project (Russian Federation/City of Moscow). During this trip, working with Raymond Struyk, resident advisor and head of the AID technical assistance team, Butler provided legal consultation to various Ministries and legislative bodies of the Russian Federation and the City of Moscow with regard to creating a legal framework for the housing sector, with particular emphasis on the laws of condominium ownership, urban planning, and mortgage finance.

This report summarizes the issues raised at the various working meetings; the recommendations made to address those issues; and further work on housing-related legal issues recommended for this project.

I. FEDERALISM

One of the most perplexing legal issues in Russia today is federal relationships. Lawmakers and government officials at various levels of government appear to be somewhat confused over the scope of their authority to enact laws or deal with entire substantive areas of law.

While Russia for some time has been a federal system, apparently it was form over substance. Now, state (Republic, oblast, kray, etc.) and local authorities are claiming real rights to enact law and govern. It is possible that legal issues of federalism will be fought out in legislative and judicial forums for some time to come. One Russian practicing attorney stated that at least one Yeltsin decree in the housing sphere was challenged in the courts, unsuccessfully, as being beyond the authority of the federal government.

The working basis of federal relationships now is the "Federal Agreement" (March 13, 1992). This agreement purports to be an amendment to the Constitution of the RSFSR. It is being treated as the guiding law by those responsible for development of legislation.

The Agreement sets out areas of exclusive jurisdiction for the federal government and the Republics, and areas of shared or concurrent jurisdiction. The basic principle is that the federal government may not legislate in areas reserved to the exclusive jurisdiction of the Republics, and when acting within its own exclusive

jurisdiction the federal law will control any contradictory local laws. The resolution of disputes over controlling law, and all disputes over concurrent jurisdiction, is assigned to the Constitutional Court of the RSFSR.

The Federal Agreement grants to the federal government the right to enact "fundamental principles" of law dealing with "programs in the spheres of government, economics, social systems, cultural and natural development." Republics are authorized to enact "administrative" or "implementing" legislation, or regulations, in those same areas. This is not a new concept; it can be found in the 1977 Constitution of the USSR. What is new is the relegation of disputes to a high court. Under the USSR Constitution, the Supreme Soviet apparently was the final arbiter of constitutional disputes between governments.

Clearly, the distinction between fundamental principles" and "administrative legislation" may be a source of some conflict now that there is a chance to actually bring challenges in a judicial forum. Several federal working groups noted that they did not have a clear idea of how aggressive they could be in formulating federal legislation.

There are other ambiguities in the Federal Agreement that may need resolution over the course of time. It is perhaps safe to project that the provisions of the Federal Agreement, or something similar to them, will find their way into the new Constitution of the RSFSR.

A copy of the Federal Agreement is attached as Schedule A.

Independent jurisdictions other than Republics (krays, oblasts, etc.) are subject to yet another federal law—the Law on Administrations. A translation of this law was not available as of this writing, but it should be obtained as it is an important part of the puzzle of Russian intergovernmental relations.

Finally, local governments (urban and rural towns, townships, districts, settlements and, apparently, cities) are subject to the Law of the RSFSR on Local Self-Government (July 6, 1991). While this law may be characterized essentially as a law governing political rights and administrative procedure, it does appear to delegate substantive authority to local governments, particularly in the areas of land, land use and housing.

An effort should be made to understand this structure; it is of more than theoretical interest insofar as it may dictate the institutions with which we should work for various substantive areas of the law.

II. DISARRAY IN THE LAWS

As the various laws and decrees enacted in the recent past move toward implementation, it is becoming evident that there is a substantial level of contradiction and inconsistency in the body of law in place.

Apparently, many laws or decrees were enacted without careful regard to the existing law, which may or may not have been explicitly revoked or superseded, and without regard to the provisions of other new laws or decrees that may deal with the same subject matter. Other laws or decrees have been adopted containing levels of ambiguity or internal contradiction that are now beginning to cause problems.

A detailed comparative review of the many laws or decrees dealing with the housing sector was not conducted, and the impressions in this report are based upon specific issues raised in working meetings.

Example: There is a possible legal conflict between Article 44 of the present Constitution, which guarantees a right to housing, and the foreclosure provision of the Law of Pledge. This conflict may be resolved in the new Constitution, but the chances of enacting the new Constitution in the present political climate appear slim.

Example: The existing Constitution (Article 11) still prohibits private ownership of land, and is clearly contradicted by implication in several of the recent laws and decrees (see, e.g., Law of the RSFSR on Principles of Federal Housing Policy; Decree On Urgent Measures to Implement Land Reform in the RSFSR (December 27, 1991)). Some informed observers think it unlikely that this issue will be resolved even in a new Constitution. They are attempting to devise legal structures (e.g., a public land bank to act as intermediary in land swaps) that will overcome this prohibition.

Example: The Law on Privatization of the Housing Stock states that housing under the control of enterprises becomes the private property of the enterprise when that enterprise is itself privatized. At the same time, the law gives individuals the right only to privatize state and municipally owned housing. The privatized enterprises have taken the position that their housing is now beyond the jurisdiction of the Privatization Law, and are actively renting or selling the housing in profit making joint stock companies. The amount of housing so affected is substantial. Legislators claim that this was not the intention of the law, but that an amendment would probably be necessary to correct it at this point.

Example: The Privatization Law states that full subsidies will be provided to privatized buildings for the "transition period," but does not define the

transition period. Some of the wealthiest buildings, 100 percent privatized, are demanding the same level of subsidy from the local government as they received prior to privatization, and there is no clear indication when this subsidy should end.

Example: The Privatization Law did not specify the form of legal organization for privatized buildings. Apparently hundreds of new associations have registered or attempted to register housing associations as joint stock companies under the law of enterprises. There is some concern that the joint stock companies are not addressing the needs of joint housing ownership, as we do in laws of condominium or other forms of common ownership. At the same time, there is some concern that local governments are not permitted to enact a comprehensive law governing the form of joint ownership because of rights established under other laws—for example, the law of Property Ownership.

It would be a substantial task to review the applicable laws and identify the potential areas for conflict among them. At present this is being done on an *ad hoc* basis, as laws are implemented. At some point it should be done in a comprehensive way.

It is worth mentioning that the Russian lawmakers have apparently become concerned with this problem. A working group at the Supreme Soviet that was interviewed as part of this report has among its members a systems analyst/ engineer, whose questions focused on what type of computer systems are used in the U.S. to identify conflicts in existing and proposed laws.

III. CONDOMINIUM LAW

Federal Efforts

Under the Federal Agreement, the detailed implementation of law and regulation for common building ownership is arguably a local matter. It can also be argued that the present Housing Privatization Law provides sufficient authority (See Articles 3 and 21) for the local governments to enact such laws. In fact, it appears that no federal Ministry is presently working on this issue.

Subsequent to the enactment of the Privatization Law, the RSFSR State Committee for Housing and Public Services did issue (October 18, 1991) "Model Regulations" for privatization of the Housing Stock, which included a model charter for housing associations. The charter is sketchy and does not deal with many important issues of property rights and governance. Moreover, its legal effect is open to question. It is considered by most to be a recommendation, without the binding

effect of law. In any event, it is widely ignored at the local level.

The pending federal decree on Urgent Measures for the Acceleration of Privatization does attempt to deal with the issues of housing association organization and management in two ways, which may be contradictory. First, it states that citizens who form condominiums or other "associations" have the right to participate in management, and that they have the additional right to form "joint stock companies" for the ownership of housing. Later, the decree grants to Minstroy and the Ministry of Finance the authority to work out "regulations" on condominiums.

Just some of the legal issues that arise here include:

- Do the privatizing owners have the right to reject the condominium form of ownership, and therefore the regulations, and set up other forms of ownership or governance?

- The "joint stock company" is a well defined legal entity at this time. If There is a right to create one for housing ownership, can local government regulate or restrict the actual form of the housing joint stock company?

- Do the Ministries have the authority to issue regulations for all forms of common housing ownership, or is the term "condominium" limited to the specific form of ownership and governance that we know as a condominium?

- Under the Federal Agreement, do the Ministries have the authority at all to promulgate regulations dealing with issues of housing management and association governance?

As of this writing the decree on Urgent Measures has not been issued. If it is issued in its current form, it will introduce several more ambiguities into the current situation. Not the least of these might be the involvement of Minstroy (The Ministry of Construction and Architecture) and other federal Ministries in the attempt to regulate condominium organizations, perhaps in competition with the work being done at local levels.

It was recommended to the Russian counterparts that the decree on Urgent Measures simply state that common ownership associations of various types may be created in accordance with the regulations to be promulgated by some level of government, be it either federal or local.

Joint Stock Companies

There is no inherent objection to creating housing associations as joint stock

companies. In fact, the Western form of cooperative housing ownership is in effect a joint stock company, and the Russian system could have the option of both condominium and cooperative forms of joint ownership. The legal issues are, however,

- The present form of joint stock company is essentially not a housing association. Many of the key issues of property rights, property management and association governance are not dealt with. The forms of organization suitable for a business do not necessarily carry over to the forms necessary for housing associations.

- Under the Russian law joint stock companies are profit oriented. As far as is known, there are no nonprofit stock companies. How will they be treated for tax purposes?

- The laws (Privatization, Urgent Measures and Principles) do not create cooperatives. They give title to units to individuals and undivided title to common areas to associations. This is not a cooperative; it is a condominium. In the formation of a joint stock company it would have to be made clear that the individuals were conveying their property rights to the company. What rights they get in return should be adequately protected—at present it is unclear that these rights are safeguarded.

There is no grounds for objecting to the pursuit of the joint stock company form of ownership provided that the legal issues surrounding the form of ownership were adequately regulated for the benefit of the new owners. In effect, the laws would have to say that some level of government has the authority to issue regulations dealing with both the condominium and joint stock company form of housing ownership.

Local Efforts

The Moscow Government, acting through the Office of Housing Privatization and the Municipal Housing Department, has some internal differences of opinion, with some staff members expressing doubt that the local government can enact an effective regulatory structure for condominiums. There position is not entirely clear, but seems to be based upon contradictions in the existing law. They are nevertheless proceeding with a proposal for such a package of law and regulations, and we have been asked to participate in the working group.

Mr. Ivanov, an elected Deputy of Mossoviet and Chairman of its Housing Committee, has also stated that he is preparing a law on common property ownership and governance, and has asked for AID's assistance.

Recommendation

A model form of condominium law has been prepared by the AID technical assistance team that attempts to deal with many of the basic issues of property rights and association governance that are not covered, or inadequately covered, in the present and pending laws and decrees. The draft of the law is attached as Schedule B.

It is recommended that assistance be given to all relevant groups at this time with the goal of bringing some coordination to the work. In the best outcome all of the interested parties would agree on the legal authority of the various governments and on one form of law or regulation.

In addition, the technical assistance team believes that these issues are of vital interest to the lending institutions that will ultimately be asked to make mortgage loans in privatized buildings, and that they should be apprised of developments and encouraged to take an active role. In this regard, a memorandum was prepared for the lenders with whom AID is working that outlines the underwriting issues associated with loans for condominium or other types of commonly owned properties. That memo is attached as Schedule C.

IV. MORTGAGE LAW

The Law of Pledge of the RSFSR (August, 1992) set out the basic principles for secured transactions, including real estate mortgages. The draft law on the Fundamentals of Real Estate Mortgages is now in the Supreme Soviet.

Mr. Zordonsky, an elected Deputy and Chairman of the Commission Budget, Planning, Taxes and Prices, who apparently is directing preparation of the fundamentals of mortgage law, met with the technical assistance team. He was provided with a translation of the Uniform Land Security Interest Act, a proposed uniform law prepared by the U.S. Commission on Uniform State Laws, as well as comments on the Law of Pledge. Mr. Zordonsky was thankful for the input and requested comments on the structure of the proposed mortgage law. These comments on the draft Law of Mortgage are attached as Schedule G..

Mr. Zordonsky asked if he could also be provided with copies of U.S. laws on negotiable instruments (they presently intend to use the European Compact on Negotiable Instruments) and of various U.S. banking laws. The committee headed by Mr. Zordonsky apparently plays the same role as the banking committees of the U.S. Congress.

Mr. Zordonsky appears to be knowledgeable and supportive of market economic reforms. It is recommended that this relationship be nurtured as it is an opportunity to provide input into several important legislative areas in the Supreme Soviet.

V. HOUSING FINANCE

There seems to be little activity in the federal government ministries in the area of housing finance at this time. The initiative is being taken by the private sector financial institutions, including Sberbank, which is the former State Savings Bank, and Promstroy Bank, the former State Bank for Industrial and Project Finance. Both institutions are now private sector commercial banks, though with close relationships to the government.

Messrs. Khadayaev and Samuschenko, of the Ministry of the Economy, advised that they were not actively involved in preparing legislation, but rather thought that new legislative proposals would filter up from the new private sector institutions. At the Ministry of Finance, Mr. Anatoliy Brezhenko, Director of the Construction Department, advised that while Finance was reviewing proposals on housing finance and providing comments, it was not at this time looking for assistance or willing to share its preliminary work.

Sergei Ivanov, Manager of the Commercial Department at Sberbank and the head of the Sberbank group working on mortgage lending, laid out for us a program of subsidized mortgage loans that Sberbank will request from the government. As we perceived several months ago, Sberbank is looking for a program for itself, perhaps on a demonstration basis, and not a general housing finance program available to all existing banks.

The program would rely on mortgage loan interest subsidies from the federal government as well as personal income tax deductions similar to the U.S. mortgage interest deduction. The government is being asked to subsidize the difference between a low mortgage interest rate, perhaps capped at 25 percent, and the current Central Bank rate for commercial loans, which is probably over 80 percent at this writing.

In a similar meeting at Promstroybank, Denis Chetyrkin, Director of the Investment Department and a Member of the Board, advised that Mr. Vavilov, a Deputy Minister of Finance, has requested that Mr. Chetyrkin prepare a proposal to the government for housing finance.

Mr. Chetyrkin was also focusing on a subsidy program for mortgage lending. The variant proposed is similar to the dual index mortgage system, in which

borrowers' payments are increased in accordance with general increases in wage rates but the loan is adjusted in accordance with the overall rate of inflation. The government would subsidize, on a current basis, the difference.

Mr. Chetyrkin is confident that real wage rate increases will outstrip inflation and that such a program would not impose very large and open ended liabilities on the government. He is also confident that such a program would be necessary only in the short run, perhaps four or five years, after which alternative sources of finance would become available.

A meeting was also held with Mr. Arkady Ivanov, the new President of the First Joint Stock Mortgage Company of Moscow (apparently, that is its actual name). The company is a joint venture of several of the larger commercial banks, which will provide the initial capitalization, and has a close relationship with the Moscow Government. The company, too, intends to submit a proposal for mortgage finance, including subsidy programs, to the Moscow Government.

It is becoming clear that these private sector institutions, in the best tradition, are perhaps out ahead of and pushing the government for action in several important areas. In each instance, however, they are requesting technical assistance in designing and evaluating proposals and programs. They are probably the best place to focus technical assistance in housing finance at this time, particularly with respect to identifying legal risks and barriers and drafting legislative proposals for submission to the public authorities. They also have vital interests in the condominium and mortgage laws, as well as housing finance.

VI. PLANNING LAW

As expected, Minstroy is in the process of writing the Fundamentals of the Town Planning Legislation of the RSFSR. This legislation will be the further development of the urban planning aspects of The Law On the Principles of Urban Development in the RSFSR (August 1, 1992).

An outline of the proposed law was provided to the technical assistance team, who were asked for comments. Comments on the structure of the law are attached as Schedule D. In addition, an outline of the basic provisions of American local law dealing with planning, zoning and subdivision was given to Minstroy, with an emphasis on the procedural aspects of those areas of law. The material provided is included under Schedule E.

In several meetings with the working group drafting the law the following issues arose:

- Minstroy is casting about for its own future role. The Minstroy apparatus, as all former USSR ministries, casts a wide net, having outposts at the Republic (kray, oblast, etc.) levels and local levels throughout the Federation. Formerly responsible for all aspects of town planning and construction, it appears to be staking out a role for itself in the forefront of the changes to land use and privatization. The working group was particularly interested in the role of the U.S. Department of Housing and Urban Development and how it is structured as an organization.

- Based on their reading of the Federal Agreement and the Law of Local Government, there is some doubt that the Federal Government can impose a structure for town planning on local governments. At the same time, members of the working group expressed the opinion that local governments, left to their own devices, would not implement the new principles in land planning, largely because they don't place on them a high priority or are unwilling to accept new responsibilities for local planning and land use. There is some concern that they will resist also as a means of resisting the privatization process for publicly owned lands. Minstroy views the planning process as an integral part of privatizing public lands.

- There is a great deal of interest in ideas that would give the federal government some leverage over local governments to compel action. The American practice of tying revenue sharing and other federal grants in aid to local planning was deemed totally inappropriate because of the Russian fiscal system, in which tax dollars are collected locally and filter up to the federal government. The Russian federal government in fact provides very little financial aid to local governments.

The progress of this law should be followed and opportunities taken to give comments or guidance.

VII. PRINCIPLES OF HOUSING REFORM

The new Law of the Russian Federation On the Principles of Federal Housing Policy is pending as of this writing. This law is an attempt to summarize and restate in a comprehensive way much of the existing law on housing reform. As such, it is a general statement of policy that will be followed by new housing codes, presumably both at the federal and republic levels.

A draft of a revised federal housing code was given to the technical assistance team shortly before the end of the mission by Mr. Greenberg, a Deputy Minister for Architecture at Minstroy. This came as a surprise not only because the law of basic principles has not yet been enacted, but because it had not been known that

preparation of the code was under Mr. Greenberg's direction.

It has since been determined that the draft was prepared by the Russian Justice Department and was submitted to the technical assistance team by Mr. Greenberg in the hope that it would generate enough negative comments to sink it.

The document is over 70 pages long. On a quick review, the law appears to me to be a rehashing of the existing housing code, with some attention to the new concepts of privatization and common ownership.

Overall, it is disappointing that the slate was not wiped clean and a fresh start made, as the law is probably outdated both conceptually and as a matter of form and structure. It could do with a great deal of thoughtful editing, consolidation and simplification. Most importantly, it misses entirely the spirit of the Law on Fundamentals on which it purports to be based.

At this writing the Law of Fundamentals has passed its first reading and could be enacted within a month. The Housing Code that will follow is a major piece of legislation and an opportunity to work on some of the main concepts we have been advocating. The progress of the Housing Code should be closely followed and, upon enactment of the Law on Fundamentals, every opportunity taken to join with the Russians in rewriting the existing draft.

VIII. LAND AND SUBURBANIZATION

Land Ownership

The issue of land ownership is still not resolved. However, in the housing sector this may not be a serious impediment to further development of private markets.

Russian law is generally interpreted to prohibit private ownership of land in "fee simple" title, which would include the generally unrestricted rights of use, development and disposition, subject to legitimate police power regulations.

Russian laws over the past several years apparently have sought to deal with the liberalization of land rights in a number of ways, most often by expanding the rights of use and occupancy to the extent that they are equivalent to fee simple ownership. For example, under the Law of the USSR On Property (March 6, 1990), a Gorbachev era law that may remain in effect in Russia today, citizens are given the right to hold land for construction of dwelling houses, and the property so owned is to be held in "life-long inheritable possession" (Article 6 (4)). Yet, at the same time,

the land itself is deemed to be the "inalienable property of the peoples."

The same approach is taken under another Gorbachev era law, the Fundamental Legislation of the USSR and the Union Republics on Land (February 28, 1990). This law grants a wide range of ownership rights, which are protected against the government by clearly defined condemnation procedures and rights of compensation.

The one crucial right that is generally restricted under all prior and current laws is the right to freely dispose of the land.

In the housing sphere, pending laws or decrees will attempt to take the land issue a step further. For example, the pending law of the Russian Federation on Principles of Federal Housing Policy defines the term "Real Estate" in the housing sector to include land, and identifies a bundle of ownership rights that approximates our concept of fee simple ownership (Article 5), including the unqualified right of disposition.

In the housing sphere, at least, there seems to be confidence that land will be available for ownership and development on acceptable terms, despite the fact that the proposed terms conflict with the provisions of the existing Constitution. It is anticipated that this conflict will be resolved in the new Constitution.

It is likely that the issue of land ownership will be resolved for the housing sphere more quickly than for other forms of land use. Mr. Zordonsky, a member of the Supreme Soviet and Chairman of its Commission on Budget, Planning, Taxes and Prices, is presently working on a legislative scheme for public land banks. He believes that public land banks will be necessary to create a market for land because the Congress of Peoples Deputies convening on November 1, 1992, will not liberalize the land provisions of the Constitution.

The proposed scheme (On the Establishment of Land Banks, Draft of October, 1992), is addressed more toward "land and agro-industrial reform" than residential issues. The concept, essentially, is to create quasi-public land banks to serve an intermediary role in land transactions. All land could be sold back to the banks at market prices, and the banks would in turn resell the land in the market. This is a very complex way to overcome the legal impediments to private land transactions.

The Yeltsin Decree On Urgent measures to Implement Land Reform in the RSFSR (December 27, 1991) appears to establish similar procedures for privatizing land presently in the hands of collective farms. The decree would give priority to collective farmers to receive appropriate amounts of land for private farming and other agriculturally oriented joint stock enterprises, and the land that is left over would be auctioned to private citizens for residential, commercial and industrial use.

The decree envisions setting up a land bank to hold and auction the surplus lands. Even under this decree, rights to dispose of land are limited to a few specified transactions, including sale upon inheritance.

Suburbanization

An issue of increasing importance to the government of the City of Moscow is suburban expansion. The City and the Administration of the Moscow Oblast have created a working group to study the availability of land surrounding Moscow for creation of large scale suburban developments and new communities. The group is assisted by several American lawyers provided by the American Bar Association's Russian and Eastern European Initiative.

The issues the working group is studying include financing and development of infrastructure, financing and development of housing, governmental relations, including fiscal relations, and creation of special development districts.

The Chairman of the working group, Mr. Kemer Borisivich Norkin, requested The Urban Institute's participation in a conference of local government officials in Moscow on October 23-24, 1992. The technical assistacne team prepared a short paper on suburban infrastructure development and finance which is attached as Schedule F.

SCHEDULE A

FEDERAL AGREEMENT

(Agreement on differentiation of matters in competence and authority between government bodies of the Russian Federation and local government bodies in the republics within the Russian Federation.)

We, plenipotentiaries of the federal government bodies of the Russian Federation and of the local government bodies in the republics within the Russian Federation, respectful to the history, traditions, culture, language and national dignity of the peoples of the Russian Federation; recognizing responsibility for preservation of state unity of peoples of the Russian Federation, integrity of republics within the Russian Federation and its territory; aiming at achievement and strengthening of trust and mutual understanding; realizing the priority of the rights and liberties of individuals and citizens regardless of nationality or place of residence, and the right of peoples to self-determination in the Russian Federation; striving for a qualitative renewal of the federal relationship on the basis of voluntary differentiation of authority and their effective fulfillment; proceeding from the fact, that the government bodies of republics within the Russian Federation are independent power on the territory under their jurisdiction on the basis of the declaration of state sovereignty, declaration of republican sovereignty, under decisions of the Supreme Soviet of the Russian Federation and under decisions of the Congress of People's Deputies of the Russian Federation on the federal system and federal relations of the Russian Federation agreed on the following:

Article I

1. Matters within the competence of federal government bodies of the Russian Federation are:

a. adoption and introduction of amendments to the constitution of the Russian Federation and federal laws, control over their observance;

b. federal arrangement and territory of the Russian Federation;

c. protection of rights and freedoms of individuals as well as citizens and citizenship of the Russian Federation; protection of rights of national minorities;

d. establishment of a federal system of legislative bodies, executive and judicial power, procedure for their establishment organization of their activities; formation of federal government bodies;

e. federal property and its management;

f. establishment of basis for federal policy and federal programs in the spheres of state, economy, social system, cultural and national development of the Russian Federation;

g. establishment of the legal framework for common market; financial, currency, credit, customs regulation, issue of money, principles of price policy, federal economic establishments, including the federal bank;

h. the federal budget; federal taxes and duties; federal funds of regional development;

i. federal power supply systems, nuclear power engineering, fissionable materials; federal transport, communications, information and communication network; outer space exploration;

j. foreign policy and international relations of the Russian Federation; problems of war and peace;

k. foreign economic relations of the Russian Federation;

l. defense and safety; war industry and purchase of weapons; establishment of the procedure for purchase and sale of weapons, ammunition, military equipment and other property, production of fissionable materials, toxic matter, drugs and regulation of their use;

m. status and defense of government borders, of territorial waters; economic zones and the continental shelf of the Russian Federation;

n. judicial system; office of the public prosecutor; criminal law, criminal legal procedure and criminal executive legislation; amnesty and pardons; civil law, civil legal procedure and arbitration procedure legislation; legal regulation of intellectual property;

o. federal legislation for settlement of disputes;

p. meteorological service, standards, metric system, calendar, official statistics and accounting;

q. state awards and honorary titles of the Russian Federation

r. federal government service

2. The government bodies of the republics within the Russian Federation participate in exercising federal administration within the confines of the constitution of the Russian Federation and federal laws.

3. The republics that comprise the Russian Federation are guaranteed representation in federal government bodies of the Russian Federation.

Article II

1. Matters under the joint authority of federal government bodies of the Russian Federation and local government bodies in the republics are:

a. provision for constitution and laws of the republics within the Russian Federation and laws to conform to the legislation of the Russian Federation;

b. protection of rights and liberties of individuals and citizens, ensuring observance of law, order and public safety;

c. use of natural resources, protection of environment and ensuring ecological safety, specially protected territories and protection of old relics and monuments of history and culture;

d. general problems of child up-bringing, education, science, culture and sport.

e. coordination of spheres of public health, protection of the family, motherhood, fatherhood and childhood; social protection, including social security programs;

f. implementation of preventive measures against catastrophes, natural disasters, epidemics, liquidation of their consequences;

g. establishment of standard principles of taxation in the republics.

h. administrative legislation, administrative procedure, labor, family, land, housing, water, forest legislation; legislation on environment protection;

i. the law practice and notary practice;

j. protection of the native environmental habitats and traditional way of life of small ethnic groups;

k. establishment of basic principles for organization of local self-government;

2. Federal government bodies of the Russian Federation, issue Fundamental legislation on matters specified in the first part of the present article, and in pursuance with such legislation government bodies in the republics within the Russian carry out legislative regulation, including adoption of laws and other legislative acts.

3. Draft laws on matters under joint authority specified in point 1 of the present article are submitted to republics within the Russian Federation.

Article III

1. Republican government bodies hold unlimited power in their territory, with the exception of powers delegated to the federal government bodies of the Russian Federation, in accordance with the present Agreement.

2. The republics within the Russian Federation are independent participants in international and foreign economic relations, agreements with other republics, territories, regions, and autonomous jurisdictions within the Russian Federation, if it is not contrary to the constitution and laws of the Russian Federation under the present agreement. International and foreign economic relations of republics within the Russian Federation are coordinated by federal government bodies of the Russian Federation together with the republics within the Russian Federation.

3. Ownership, use and disposal of land, mineral, water and other natural resources are regulated by the Fundamental legislation of the Russian Federation and legislation of the republics within the Russian Federation. The status of federal natural resources is determined by mutual agreement of the federal government bodies and state government bodies of the republics within the Russian Federation.

4. If the case of emergency is declared by federal government bodies of the Russian Federation on the territory of a republic within the Russian Federation, preliminary consent of this republic is required. Federal state government bodies of the Russian Federation can declare the state of emergency on the territory of the republic within the Russian Federation without its consent only in case of disorders accompanied with violence. If circumstances that serve as grounds to declare the state of emergency occur on the territory of only one republic within the Russian Federation, the state of emergency can be declared by government bodies of such republic with notification of the President of the Russian Federation and the Supreme Soviet of the Russian Federation, and effected pursuant to federal laws.

Article IV

1. Federal government bodies of the Russian Federation, by agreement with local government bodies in the republics within the Russian Federation are entitled to confer some of their powers on such bodies, if it is not contrary to the constitution and laws of the Russian Federation.

2. Local government bodies in the republics within the Russian Federation by agreement with the federal government bodies of the Russian Federation are entitled to confer some of their powers to such bodies.

Article V

1. Federal government bodies of the Russian Federation, and local government bodies of the republics within the Russian Federation observe federal laws, other legislative acts of the Russian Federation in their activities on the territory of the republic within the Russian Federation under procedure established by the legislation of the Russian Federation.

2. Legal documents issued by the government bodies of the Russian Federation, and the republics within the Russian Federation within the competence of such bodies, institutions and officials are recognized as valid on the whole territory of the Russian Federation.

Article VI

1. Federal government bodies of the Russian Federation are not entitled to issue legislative acts on matters referred to the competence of government bodies of a republic within the Russian Federation. If government bodies of a republic within the Russian Federation issue laws and other legislative acts on matters within the exclusive competence of federal government bodies of the Russian Federation, federal laws are applied.

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2. Disputes on matters specified in point 1 of the present article, and on matters within the joint competence pursuant to the article 2 of the present Article are settled by the Constitutional Court of the Russian Federation.

3. Relations between the federal government bodies of the Russian Federation and local government bodies in the republics within the Russian Federation are based on the Constitution of the Russian Federation, constitutions of the republics, mutual respect and responsibility. Disputes are settled under compromising procedures and in order established in the Constitution and laws of the Russian Federation.

Article VII

During the period before the law is adopted and corresponding changes and amendments are introduced to the constitution of the Russian Federation, delimitation of power and authority provided in the present Agreement can not be unilaterally changed.

Article VIII

After present agreement is approved by the Congress of People's Deputies of the Russian Federation, it is a part (separate sections) of the Constitution of the Russian Federation. Changes and amendments are introduced to the constitution of the Russian Federation with the consent of the republics within the Russian Federation that signed present agreement.

Each republic within the Russian Federation reserves its rights to sign present agreement, as well as regulate their relations concerning the delimitation of power with the federal government bodies in accordance with the constitution of the Russian Federation.

Moscow
March 13, 1992

SCHEDULE B

TEXT OF CONDOMINIUM LAW

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Preamble

The Law of the Russian Federation On the Privatization of the Housing Stock (the "Privatization Law"") provides that occupants of state and municipally owned housing may become the owners of their apartment units, and that the common areas and equipment of the buildings in which such apartments are located shall be jointly owned by the owners of the apartment units.

It is the intent of this law to further describe and clarify the property rights set out in the Privatization Law; to encourage privatization of housing units and establish an efficient market for privatized units by creating a form of legal organization for jointly owned buildings that will implement the intention of the Privatization Law; to describe the relationship between municipal housing authorities and private entrepreneurs, on the one hand, and owners of privatized apartment units, on the other, during the period of transition to a private housing market; and to provide protection for present and future owners of apartments in jointly owned buildings.

Section 1
Applicability

(a) This Act applies to all Associations for the common ownership and management of housing in apartment buildings submitted for registration in the Russian Federation pursuant to the provisions of this Act after the effective date of this Act.

(b) The provisions of this Act do not affect any Associations for the common ownership and management of housing in apartment buildings effectively registered under applicable laws before the effective date of this Act.

(c) The provisions of this law may not be modified or waived by any Person in the creation of a Condominium under this law.

(d) In the event of a conflict between this law and the Declaration and/or Bylaws of a Condominium, the provisions of this law shall govern. In the event of a conflict between the provisions of a Declaration and Bylaws of a Condominium, the provisions of the Declaration shall govern.

Section 2
Definitions
[Others may be added.]

Unless specifically provided otherwise or the context otherwise requires, in this Act:

(1) "Allocated Interest" means the undivided interest or liability in the Common Elements, the Common Expenses, and votes in the management of the Association allocated to each Unit.

(2) "Association" or "Unit Owners' Association" means a voluntary association of Unit Owners, which may be a nonprofit corporation or any other unincorporated association created under the provisions of this law.

(3) "Building" means an existing or newly constructed multifamily apartment building and all improvements, equipment and fixtures which by custom or law are considered to be part of a building.

(3) "Common Elements" means all portions of a Building other than the Units, including without limitation the Land and any equipment used in the operation and maintenance of the building and not allocated to a Unit, and shall include the Limited Common Elements.

(4) "Common Expenses" means expenditures made by or financial liabilities of an Association, together with any allocations to reserves.

(5) "Common Expense Liability" means the liability for Common Expenses allocated to each Unit under the Declaration.

(6) "Condominium" means Real Estate, portions of which are designated as Units for separate ownership and the remainder of which is designated for joint ownership solely by the owners of those Units. Real estate is not a Condominium unless the undivided interests in the Common Elements are owned by the Unit Owners.

(7) "Declarant" means any legal entity, including a Municipal Authority or Person or group of Persons acting together, who offer to sell to a Purchaser his or its interest in a Unit not previously sold; provided, however, that for purposes of the provisions of Section 15 of this law a Declarant shall not mean (i) any Association formed by owners of Units privatized pursuant to the Privatization Law, or (ii) any Association formed by such owners and a Municipal Authority, except to the extent that any such Association shall itself own and offer to sell Units to Purchasers. A Municipal Authority shall not be deemed to

offer Units for sale simply by allowing privatization of such Units by occupants pursuant to the Privatization Law.

(8) "Declaration" means any contract or other legal instrument, however described, that creates a Condominium pursuant to this law, and any amendments to such instrument.

(9) "Development Rights" means any rights reserved by a Declarant or Municipal Authority to construct and add additional Units or Common Elements to the Condominium subsequent to the time at which the first Unit in the Condominium is sold or privatized, as the case may be.

(10) "Leasehold Condominium" means any Condominium created under circumstances in which the legal interest in Units and Common Elements is less than full ownership, including leasehold interests and other interests providing for use and control for a limited term.

(11) "Limited Common Element" means a portion of the Common Elements allocated by the Declaration for the exclusive use of one or more but fewer than all of the Units, and may include without limitation parking spaces and storage facilities.

(12) "Land" means the land underlying and adjoining the Building as such may be allocated to the Building in accordance with the applicable laws.

(13) "Master Association" means an association of two or more Associations created under this law for the joint management of Common Elements.

(14) "Mortgage" means any voluntary mortgage, pledge, security interest or lien that may attach to Real Estate under the laws of the Russian Federation.

(15) "Mortgage Lender" means any bank or other financial institution that lends money to an Association or to a Purchaser or Unit Owner for the purchase or rehabilitation of a Unit in a Condominium, which loan is secured by a Mortgage.

(16) "Municipal Authority" means any government, state or municipally owned enterprise, or department, committee or agency of a government or state or municipally owned enterprise, holding legal ownership of buildings or portions of buildings subjected to joint ownership under the provisions of this law.

(17) "Non-Residential Unit" means a Unit used for any purpose other than the dwelling of a natural person or persons.

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(18) "Owner" means any person holding legal ownership of Real Estate.

(19) "Person" means a natural person or group of natural persons, or a legal entity, partnership, unincorporated association, corporation or other business arrangement.

(20) "Purchaser" means any Person, other than a Declarant or a Person in the business of selling real estate for his or its own account, who by means of a voluntary transfer, other than privatization pursuant to the Privatization Law, becomes the Owner of a Unit.

(21) "Real Estate" means a lease or ownership interest in, over or under land, including buildings, structures, and other improvements and interests that by custom or law are transferred with land or buildings.

(22) "Residential Unit" means a Unit used solely as the dwelling of a natural person or persons.

(23) "Special Rights" means any rights reserved to a Declarant or Municipal Authority, including Development Rights, under the terms of this law and the Declaration, modification or amendment of which would require the consent of the Declarant or the Muncipal Authority.

(24) "Unit" means an individual apartment in a Condominium, as described in the Declaration of the Condominium, and includes Residential and Non-Residential Units.

Section 3
Creation of a Condominium

Article 3.01

(a) Any Owner or Association of Owners of a Building or any portion of a Building, including any Association comprised of a Municipal Authority and other Persons, has the right to create a Condominium. A Condominium may be created pursuant to this Act only by registering a Declaration executed by all Persons owning Units at the time of registration.

(b) Registration shall be accomplished with the formalities of a transfer of Real Estate required under applicable law. The Declaration must be registered in the land records where the Condominium is located in accordance with applicable laws regarding registration of interests in

Real Estate, and must be indexed in such land records in the name of the Condominium and the Association and in the name of each Person executing the Declaration.

Article 3.02.

The Declaration for a Condominium must contain the information required by this law, including the following:

(1) A legally sufficient description of the Real Estate included in the Condominium.

(2) A description of the boundaries and component elements of each Unit created by the Declaration, including the Unit's identifying number; the location of the Unit; the area of the rooms; and the equipment of the Unit.

(3) A schedule of the Owners of the Units at the time of registration.

(4) A description of the Common Elements and the Limited Common Elements, if any.

(5) In a chart or charts, an allocation to each Unit of the fraction or percentage of undivided interests in the Common Elements, the Common Expenses, and the votes in the management of the Association, including a statement of the formulas used to establish those allocations.

(6) The Declaration shall state whether Units may be added to or withdrawn from the Condominium. If Units may be added to or withdrawn from the Condominium, the Declaration must state the formulas to be used to reallocate the Allocated Interests among all Units included in the Condominium after the addition or withdrawal.

(7) A description of any restrictions on rights of use, occupancy and alienation of Units in the Condominium, including matters affecting generally the ownership of the Real Estate comprising the Condominium.

(8) The extent to which Units in the Condominium, if any, are Non-Residential Units, and the restrictions on use, if any, placed upon such Non-Residential Units. The Declaration may provide for class voting (Residential and Non-Residential Units) on specified issues affecting the class if necessary to protect valid interests of the class.

(9) Such other matters the Declarant deems appropriate.

Article 3.03.

(a) Allocations must be reasonable and may not discriminate in favor of Units owned by a Declarant or Municipal Authority. Except for minor variations due to rounding, the sum of the undivided interests in the Common Elements, Common Expense and votes allocated at any time to all the Units must each equal one if stated as fractions or 100% if stated as percentages.

(b) Unless otherwise provided in the Declaration, Allocated Interests will be set on the basis of the proportion of the number of square meters in a Unit to the total number of square meters of all of the Units.

Article 3.04.

(a) Unless otherwise provided in this law, the Declaration may be amended only by vote or agreement of Unit Owners holding at least 67% of the Allocated Interests in the Common Elements.

(b) Every amendment to the Declaration shall be registered in the same manner as the original Declaration and shall be effective only upon registration.

(c) Unless otherwise provided in this law, no amendment to the Declaration may increase Special Rights, change the boundaries of the Units, change the Allocated Interests, or change the uses to which a Unit is restricted without the unanimous consent of the Unit Owners affected by such amendment.

(d) No Special Right reserved under the Declaration to a Declarant or Municipal Authority may be amended without the consent of the Declarant or Municipal Authority. All amendments to the Declaration shall be subject to the consent of Mortgage Lenders to the extent set forth in Section 13 of this law.

(e) No action to challenge the validity of an amendment to the Declaration may be brought more than one year after the amendment is recorded.

Article 3.05.

An amendment to the Declaration shall be required upon sale or privatization of a Unit for the first time after registration of the Declaration, but not for any subsequent resale of the Unit.

Article 3.06.

Local government shall have the authority to establish by regulations consistent with this law the form of Declaration to be used for registration of Condominiums; provided that Declarations may contain additional provisions not inconsistent with this law or the local regulations.

Section 4
Ownership of the Units and Common Elements

Article 4.01

The Common Elements are held in joint ownership of the Units Owners. If some Units are not sold or remain under the ownership and control of Municipal Authorities or the Declarant, the Municipal Authorities or the Declarant, as the case may be, remains the owner of Common Elements to the extent of their Allocated Interests under the Declaration, and shall contribute to the Common Expenses of the Condominium in proportion to such Allocated Interests.

Article 4.02

The Allocated Interests in Common Elements shall be based on the same formula as is used to allocate votes and Common Expense Liability under the Declaration.

Article 4.03

A Unit can be owned by any Person. Units may be owned jointly by several Persons and one Person can own more than one Unit and/or interests in more than one Unit.

Article 4.04.

A Unit is a separate parcel of Real Estate. As such, property taxes payable with respect to a Unit shall be payable solely by the Owner of the Unit.

Article 4.05

The rights and responsibilities of joint owners of a Unit shall be governed by the provisions of the legislation concerning ownership of property. The rights and responsibilities of the Unit Owners as joint owners of the Common Elements shall be governed by the provisions of this law and the Declaration.

Article 4.06

The Unit Owner's Allocated Interest in the Common Elements is bound with the ownership of the Unit and shall be transferred with the Unit. Any attempted transfer of Common Elements by whatever means, including without limitation judgement of a court, without a transfer of the associated Unit or Units shall be null and void as a matter of law.

Article 4.07.

Except as provided in Section 9 of this law, no Unit Owner may withdraw his Unit from the operation and effect of the Declaration of the Condominium.

Section 5
Rights and Responsibilities of Unit Owners

Article 5.01.

The rights and responsibilities of a Unit Owner are the same as those of an Owner of Real Estate generally, subject to the rights of the Association and other Unit Owners as set forth in this law and the Declaration.

Article 5.02.

Unit owners are obliged to contribute to costs of Common Expenses in accordance with their Allocated Interests set forth in the Declaration. A Declarant or Municipal Authority shall be liable for payment of Common Expense Liability against any Units owned by the Declarant or Municipal Authority.

Article 5.03.

An Association shall require Unit Owners to make periodic payments to a reserve fund designated for repairs and maintenance of the Common Elements. The amount of the payments shall be set by the Association so that after payment of current operating costs such as repairs, maintenance, insurance premiums, trash removal, utility charges, and other current charges there shall be a reserve for reasonably anticipated replacements of equipment and other capital repairs.

Article 5.04.

Unit Owners may be required by the Association from time to time to pay special assessments to fund unforeseen expenses or repairs of the Common Elements, and such assessments shall be included in the Unit Owner's Common Expense Liability.

Article 5.05.

The Owner of the Unit is obliged to maintain and repair his Unit at his own expense. When using, maintaining, repairing or modifying the Unit (or a part of it) the Unit owner must not infringe and endanger the property or rights of the others Unit Owners.

Article 5.06.

The Owner of a Unit must repair at his own expense any damage caused by him (or those who live in his Unit) to other Units or to the Common Elements.

Article 5.07.

Subject to the provisions of the Declaration and the Bylaws of the Association, a Unit Owner has the right to use the Unit and the Common Elements for his own needs as well as for the needs of his family and household. The Unit Owner has the right, without the approval of the Association or other Unit Owners, to transfer his Unit to any other Person by sale, lease, gift, bequest, devise, pledge or Mortgage or any other manner permitted by law. Unless this law provides otherwise, a transfer or mortgage shall be made in accordance with the provisions of the applicable legislation concerning the transfer or mortgage of Real Estate.

Article 5.08.

All Unit Owners shall have the right to participate in the management of the Condominium in accordance with the provisions of the Declaration and the By-Laws of the Association. Those Persons who occupy but do not own a Unit shall not have the right to participate in the Association or in the management of the Building and Common Elements; provided, however, that nothing shall prevent the Owner of a Unit from granting his proxy to vote to any person occupying his Unit.

Article 5.09.

Decisions entrusted to the Unit Owners under this law or the Declaration may be taken only a meeting of the Association at which a quorum of not less than Unit Owners

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holding [20%] of the Allocated Interests in the Common Elements are present.

Article 5.10.

All decisions of the Association entrusted under this law or the Declaration to all Unit Owners shall be made by affirmative vote of the Unit Owners holding a majority of the Allocated Interests in the Common Elements voting in person or by proxy at a duly called meeting of the Association.

Article 5.11

The vote allocated to jointly owned Units may be cast by the majority vote of the joint owners. The aggregate vote of joint owners of a Unit shall not exceed the Allocated Interest of the Unit.

Section 6
Organization of Unit Owners

Article 6.01

A Unit Owners' Association must be organized no later than (i) the date the first Unit in the Condominium is sold by a Declarant or (ii) the date on which 30% of the Units in a building are privatized by their occupants pursuant to the Privatization Law. The membership of the Association at all times shall consist exclusively of all the Unit Owners, including the Declarant or Municipal Authority, until such time as the Declarant or the Municipal Authority shall sell or transfer its last Unit; provided, however, that the rights of a Declarant or Municipal Authority to participate in management of the Association shall be subject to the further provisions of this law set out under Section 14 of this law.

Article 6.02.

(a) The Association may be organized as a nonprofit corporation or as an unincorporated association under the applicable legislation.

(b) Local government shall have the authority to establish by regulations consistent with this law the form of charter or other governing document of Associations; provided that any such charter or governing document may contain additional provisions not inconsistent with this law or the local regulations.

Article 6.03.

(a) Except as otherwise provided herein, and subject to the provisions of the Declaration, the Association may:

(1) adopt and amend bylaws and rules and regulations;

(2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners;

(3) elect the Executive Board of the Association;

(4) hire and discharge managing agents and other employees, agents, and independent contractors;

(5) select independent auditors to review and certify the financial affairs of the Association, or elect from among the Unit Owners an independent audit committee;

(6) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit owners on matters affecting the Condominium;

(7) make contracts and incur liabilities;

(8) regulate the use, maintenance, repair, replacement, and modification of Common Elements;

(9) cause additional improvements to be made as a part of the Common Elements;

(10) impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Unit Owners;

(11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and rules and regulations of the Association;

(12) exercise any other powers conferred by this law, the Declaration or Bylaws of the Association;

(13) exercise all other powers that may be exercised under the laws of the Russian Federation by legal entities of the same type as the Association; and

(14) exercise any other powers necessary and proper for the governance and operation of the Association.

(b) The powers enumerated in paragraphs (1), (2), (3), (4) and (5) of the foregoing Article 6.03 (a) shall be

exercised by vote of all Unit Owners. Unless otherwise provided in the Declaration or in this law, all other powers of the Association may be delegated to the Executive Board of the Association.

Article 6.04.

The Declaration may not impose limitations on the power of the Association to deal with a Declarant or Municipal Authority which are more restrictive than the limitations imposed on the power of the Association to deal with other Persons.

Article 6.05.

(a) The Unit Owners shall elect an Executive Board of the Association. Except as provided in the Declaration or this law, the Executive Board may act in all instances on behalf of the Association.

(b) The Executive Board may fill vacancies in its membership for the unexpired portion of any term.

Article 6.06.

(a) The Bylaws of the Association shall provide for:

(1) the number of members of the Executive Board and the titles of the officers of the Association;

(2) election by the Executive Board of a chairman, treasurer, secretary, and any other officers of the Association the Bylaws specify;

(3) the qualifications, powers and duties, terms of office, and manner of nominating, electing and removing Executive Board members and officers and filling vacancies;

(4) which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) which of its officers may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association; and

(6) the method of amending the Bylaws.

(b) Subject to the provisions of the Declaration, the Bylaws may provide for any other matters the Association deems necessary and appropriate.

Article 6.07.

At least once in every fiscal year of the Association the Executive Board shall cause to be prepared and provided to the Unit Owners a complete and accurate statement of the financial accounts of the Association. The statement of the Association's accounts shall be prepared and certified by either an indpendent outside auditor selected by the Unit Owners or by an audit committee elected by the Unit Owners from among themselves. Members of the audit committee shall not be members of the Executive Board.

Article 6.08.

The Association is responsible for maintenance, repair, and replacement of the Common Elements, and each Unit Owner is responsible for maintenance, repairs, and replacements to his Unit.

Article 6.09.

A meeting of the Association must be held at least once each year. Special meetings of the Association may be called by the Chairman of the Executive Board, a majority of the members of the Executive Board or by Unit Owners holding twenty percent [20%], or any lower percentage specified in the Bylaws, of the Allocated Interests in the Common Elements.

Article 6.10.

A third person, without actual knowledge that the Association or any of its officers is exceeding or improperly exercising its or his powers, is fully protected in dealing with the Association or its officers as if they possessed and properly exercised the powers they purport to exercise.

Section 7
Collection of Assessments

Article 7.01.

(a) The Association has a claim against a Unit for any assessment levied against that Unit for Common Expense Liability or fines imposed against its Unit Owner from the time the assessment or fine becomes due. The Association's claim may be enforced in like manner as a Mortgage on Real Estate pursuant to the applicable legislation of the Russian Federation.

(b) The claim of the Association against the Unit for Common Expense Liability and any other fees, charges and penalties assessed against a Unit Owner under the provisions of the Declaration and Bylaws shall have priority over any other claims registered against the Unit other than (i) claims of any governmental body for taxes on Real Estate, and (ii) the lien of a Mortgage registered prior to the time that the Association's claim against the Unit arose.

Article 7.02

Subject to Article 15.04 (c), the Association's claim against a Unit shall be an obligation of any subsequent Owner of the Unit regardless of whether or not such subsequent Owner had knowledge of the claim before purchase of the Unit.

Article 7.03.

This section does not prohibit legal actions in contract to recover sums owed to the Association by Unit Owners or prohibit an Association from taking a deed to a Unit in lieu of foreclosure.

Section 8
Borrowing by the Association

(a) With the consent of Unit Owners holding [67%] of the Allocated Interests in the Common Elements, the Association may borrow funds for improvements or repairs to the Common Elements or for operating costs of the Association and may secure such borrowings with the future cash flow of the Association, including the Association's rights to receive payments for Common Expenses.

(b) With the consent of Unit Owners holding [80%] of the Allocated Interests in the Common Elements, the Association may Mortgage all or a portion of the Common Elements of the Condominium, such Mortgage to be in the form of a written document executed by the consenting Unit Holders.

(c) In the event of a default and judgement against the Association for borrowed funds, the liability of the Association shall be a liability of all Unit Owners. In the event that all or a portion of the Common Elements of the Association have been Mortgaged to secure such borrowing, the Mortgage Lender shall be obligated to first enforce its security against the Common Elements so Mortgaged. in the event that Common Elements have not been Mortgaged, the judgement against the Association shall constitute not a lien on the Common Elements, but a lien on the Units. Any

Unit Owner shall have the right to release such lien by payment to the lender of a portion of the outstanding debt proportionate to the Unit Owner's Allocated Interest in Common Expenses, and upon such payment the lender shall have no further right to take action against the Unit of such Unit Owner.

Section 9
Termination of the Condominium

(a) A Condominium may be terminated in the following manner:

(1) a taking of the entire Real Estate comprising the Condominium by an agency of government; or

(2) by agreement of Owners of Units holding at least eighty percent (80%) of the Allocated Interests in the Common Elements, or any larger percentage which the Declaration specifies.

(b) Any compensation received in a taking of the Real Estate or from sale of the Real Estate subsequent to termination of the Condominium shall be paid to the Association for the benefit of the Unit Owners and distributed by the Association first to Mortgage Lenders in proportion to their interests in the Units and then to the Unit Owners in proportion to their Allocated Interests.

(c) In the event that the Real Estate of the Condominium is not sold subsequent to termination, the Unit Owners shall become owners in common with respect to the Units and Common Elements in proportion to their Allocated Interests, provided that they shall have the exclusive right to occupy the space that was formerly their Unit.

(d) Following termination of the Condominium, the rights of Mortgage Lenders with respect to any of the Units shall continue in effect and may be enforceable to the same extent as prior to termination.

Section 10
Miscellaneous Provisions Regarding Operations

Article 10.01.

If entered into before the Executive Board elected by the Unit Owners takes office, (i) any management contract, employment contract, or lease, or (ii) any other contract

or lease between the Association and a Declarant or Municipal Authority or an affiliate of a Declarant or Municipal Authority, may be terminated without penalty by the Association at any time after the Executive Board elected by the Unit Owners takes office upon not less than sixty (60) days' notice to the other party.

Article 10.02.

A zoning, subdivision, building code, or other law governing the use of Real Estate may not prohibit the Condominium form of ownership or impose any requirement upon a Condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this law invalidates or modifies any provision of any zoning, subdivision, building code, or other law, ordinance, or regulation governing the use of Real Estate.

Article 10.03.

Subject to the provisions of the Declaration and other provisions of law, a Unit Owner:

(1) may make any improvements or alterations to his Unit that do not impair the structural integrity or mechanical systems of the Building or any other Unit, or lessen the support of any portion of the Building;

(2) may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium, without permission of the Association;

(3) after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity of mechanical systems of the Building or another Unit or lessen the support of any portion of the Building.

Article 10.03.

(a) Subject to the provisions of the Declaration and other provisions of this law, the boundaries between adjoining Units may be relocated or an existing Unit subdivided into two or more Units by an amendment to the Declaration upon application to the Association by the Owners of those Units.

(b) The boundaries of adjoining Units may be relocated or existing Units subdivided to create two or more Units without the consent of the other Unit Owners, provided that such relocation or subdivision does not result in change to the boundaries of other Units or the Allocated Interests of other Unit Owners.

(c) At the expense of the Unit Owners applying for relocation of boundaries or subdivision of Units, the Association shall prepare and register necessary amendments to the Declaration to show the subdivided Unit or altered boundaries between adjoining Units, their dimensions and identifying numbers, and the amendments to the Allocated Interests of such Units.

Article 10.04.

(a) Commencing not later than the time of the first conveyance of a Unit to a Person other than a Declarant, the Association shall maintain, to the extent reasonably available, (i) property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against, and (ii)liability insurance protecting the Association and the Unit Owners against claims for damage to persons or property occuring on the Common Elements.

(b) Unit Owners shall be solely responsible for insuring the contents of their Units, including all personnel property and fixtures contained therein.

(c) In the event of a casualty loss to the Building, the insurance proceeds shall be paid to an independent insurance trustee or, if there is no trustee appointed, to the Association, to be held by the trustee or the Association for the benefit of the Unit Owners and the Mortgage Lenders. All insurance proceeds for casualty loss shall be disbursed first for the restoration or reconstruction of the Building, unless the Unit Owners shall vote to terminate the Condominium in accordance with the provisions of this law. In the event that the Condominium is terminated, the insurance proceeds shall be held by the insurance trustee or the Association and disbursed first to the Mortgage Lenders in proportion to their interests in the Units, and the remainder, if any, to the Unit Owners in proportion to their Allocated Interests.

(d) No Mortgage Lender or Mortgage agreement may require that insurance proceeds be distributed to the Mortgage Lender in the event that the Association elects to restore or repair the Building.

Article 10.05.

(a) Neither the Association nor any Unit Owner except the Declarant is liable for the actions of a Declarant or Municipal Authority in connection with any part of the Condominium which the Declarant or Municipal Authority has the responsibility to construct or maintain.

(b) An action alleging a wrong done by the Association must be brought against the Association and not against any Unit Owner. If the wrong occurred during any period of control of the Executive Board by a Declarant or Municipal Authority, and the Association gives the Declarant or Municipal Authority reasonable notice and an opportunity to defend against the action, the Declarant or Municipal Authority that then controlled the Association is liable to the Association or to any Unit Owner damaged by the wrong.

Section 11
Leasehold Condominiums

Subject to the provisions of this Section, a Condominium may be created with respect to Real Estate held in less than full ownership, provided that the legal owner of the Real Estate agrees:

(1) to subordinate his lease or other agreement concerning use and occupancy to the Declaration of the Condominium;

(2) that the lease or other agreement concerning use and occupancy may not be terminated in its entirety for the Association's failure to pay charges, rents or other amounts due, but that the lessor's sole remedy shall be against any Unit Owner failing to pay his share of such charges, rents or other amounts in proportion to his Allocated Interest in Common Expenses.

Section 12
Master Associations

(a) Two or more Associations may join in an association ("Master Association") for the joint management of Common Elements which they own jointly, or which for reasons of economy and efficiency would be better managed through joint efforts. The management of such Master Associations shall be governed to the extent applicable by the provisions of Articles 6.02, 6.03, 6.05, 6.07, and 6.09 of this law, except that the election of members of the

Executive Board shall be by the vote of all members of the Associations that are members of the Master Association.

(b) Associations may delegate to a Master Association such responsibilities for management of Common Elements as the Declarations of the Associations may provide.

Section 13
Protection of Mortgage Lenders

Article 13.01.

The Association shall give prompt written notice to each Mortgage Lender of:

(1) any taking of the Real Estate or casualty loss which affects a material part of the Real Estate of the Condominium or any Unit on which such Mortgage Lender holds a Mortgage;

(2) any delinquency of more than 60 days in the payment of Common Expense Liability by the Owner of a Unit on which the Mortgage Lender holds a Mortgage;

(3) any lapse, cancellation or material modification in the insurance policy insuring the Building;

(4) any action which would require the consent of a specified percentage of Mortgage Lenders as provided in Article 13.02 of this Section;

(5) any judgement in a court of law rendered against the Association; or

(6) any intention of the Association to enforce its rights to collect Common Expense Liability against a Unit on which the Mortgage Lender holds a Mortgage.

(b) Upon receipt of notice from an Association that it intends to enforce its rights against a Unit, a Mortgage Lender shall have 30 days from the date of such notice to pay to the Association any amounts due with respect to the Unit, and the Association shall refrain from further action against the Unit until said 30 day period has expired. Should the Mortgage Lender elect to pay the amounts due to the Association, and to continue to make payments with respect to the Unit as they become due, the Association shall refrain from taking any further action with respect to the Unit.

Article 13.02.

No amendment of any material provision of the Declaration or Bylaws of the Association may be adopted by the Association without the consent of 51% of the Mortgage Lenders holding Mortgages on Units in the Condominium. For purposes of this Article material provisions shall include, without limitation, any provision affecting:

(1) assessment of Common Expense Liability;

(2) voting rights;

(3) allocation of Allocated Interests;

(4) reserves for maintenance, repair and replacement of Common Elements;

(5) insurance coverage;

(6) imposition of restrictions on the right to use, sell or lease a Unit;

(7) any Special Rights granted to Mortgage Lenders under this law or the Declaration; and

(8) boundaries of Units or subdivision of Units (except that changes to or subdivision of adjoining Units shall require the consent only of Mortgage Lenders holding Mortgages on those Units).

Article 13.03.

The Association may not take any of the following actions without the approval of 51% of the Mortgage Lenders holding Mortgages on the Units:

(1) convey or encumber any of the Common Elements (except that the granting of easements and licenses for installation of utilities shall not be deemed a conveyance);

(2) the restoration and repair of the Real Estate after casualty in a manner other than specified in the Declaration;

(3) termination of the Condominium;

(4) merger of the Association into another Association or creation of a Master Association;

(5) pledge or assignment of the future income or receivables of the Association, including the right to receive Common Expense Liability payments.

Article 13.04.

The Association shall permit any Mortgage Lender to inspect the financial records of the Association during normal business hours, and upon the request of any Mortgage Lender shall provide a copy of the current financial statements of the Association.

Article 13.05.

The Declaration may grant to Mortgage Lenders additional rights to approve specified actions of the Association; provided, however, that under no circumstances shall rights granted to Mortgage Lenders (1) deny or delegate the Association's control over the administrative affairs of the Association, or (2) prevent any insurance trustee or the Association from receiving and distributing insurance proceeds in accordance with the provisions of this law.

Article 13.06.

Upon acquiring ownership of a Unit through enforcement of its rights under a Mortgage, a Mortgage Lender shall succeed to all rights and obligations of an Owner of the Unit so acquired.

Section 14
Special Rights

Article 14.01.

(a) A Declarant or Municipal Authority shall have the following Special Rights with respect to the Condominium:

(1) to exercise its Development Rights to the extent specified in the Declaration;

(2) to have and use a general construction easement over the Common Elements to complete Development Rights to the extent specified in the Declaration;

(3) to maintain sales offices and management offices in the Building;

(4) to sell or lease any Unit which the Declarant or Municipal Authority owns;

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(5) during the period of control by the Declarant or Municipal Authority described in Article 14.02, to appoint or remove any officer of the Association or Executive Board;

(b) The rights of a Declarant or Municipal Authority to exercise Development Rights shall terminate [3] years from the date of registration of the Declaration.

Article 14.02.

The Declaration may provide for a period of control of the Association by a Declarant or Municipal Authority, during which period a Declarant or Municipal Authority, or Persons designated by them, may appoint and remove the officers and members of the Executive Board. Regardless of the period provided in the Declaration, a period of control by a Declarant or Municipal Authority shall terminate as follows:

(1) Upon purchase or privatization of [30%] of the Units by Persons other than the Declarant or Municipal Authority, at least 30% of the members of the Executive Board must be subject to election by the Unit Owners other than the Declarant or Municipal Authority;

(2) Upon purchase or sale of from [30%] to [50%] of the Units by Persons other than the Declarant or Municipal Authority, at least 40% of the members of the Executive Board must be subject to election by the Unit Owners other than the Declarant or Municipal Authority;

(2) Upon the earlier of (i) [2] years from the date of registration of the Declaration, or (ii) purchase or privatization of more than 50% of the Units in the Condominium by Persons other than the Declarant or Municipal Authority, all members of the Executive Board shall be subject to election by the Unit Owners other than the Declarant or Municipal Authority.

(b) Elections of members of the Executive Board by Unit Owners other than a Municipal Authority or Declarant must occur no later than [60] days after the occurrence of the event requiring such elections.

(c) Subsequent to transfer of control of the Executive Board to Unit Owners by the Declarant or Municipal Authority, no change or modification to the provisions of the Declaration dealing with the Special Rights of Declarants and Municipal Authorities shall be made without the consent of the Declarant or Municipal Authority.

Section 15
Protection of Unit Purchasers

Article 15.01.

A Declarant, prior to the offering of any interest in a Unit to a Purchaser, shall prepare an offering statement conforming to the requirements of this Section.

Article 15.02.

A public offering statement must contain or fully and accurately disclose:

(1) Copies and a brief narrative description of the significant features of the Declaration, including restrictions and reservations affecting the Condominium; the Bylaws and any rules or regulations of the Association; copies of any contracts and leases to be signed by Purchasers in connection with their purchase; and a brief narrative description of any contracts or leases that will or may affect the affairs of the Association.

(2) A projected budget for the Association, either within or as an exhibit to the offering statement, for one year after the date of the first conveyance to a Purchaser, and thereafter the current budget of the Association, together with a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

(i) a statement of the amount included in the budget as a reserve for repairs and replacement;

(ii) a statement of any other reserves;

(iii) the projected Common Expense assessment by category of expenditures for the Association; and

(iv) the projected monthly Common Expense assessment for each type of Unit.

(3) Any services not reflected in the budget that the Declarant provides, or expenses that he pays, and that he expects may become at any subsequent time a Common Expense of the Association and the projected Common Expense assessment attributable to each of those services or expenses for the Association and for each type of Unit.

(4) A statement that within fifteen (15) days after receipt of a public offering statement a Purchaser, before

taking title to the Unit, may cancel any contract for purchase of a Unit from a Declarant.

(5) A statement that any deposit made in connection with the purchase of a Unit will be held in an restricted account until title is transferred and will be returned to the Purchaser if the Purchaser cancels the contract.

(6) Any current or expected fees or charges to be paid by Unit Owners for the use of the Common Elements and other facilities related to the Condominium.

(7) All unusual and material circumstances, features, and characteristics of the Condominium and the Units.

(8) A statement based on a report prepared by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building.

(9) A statement by the Declarant of the expected useful life of each item reported on in paragraph (9) or a statement that no representations are made in that regard.

(10) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

Article 15.03.

Any deposit made in connection with the purchase of a Unit shall be placed in a restricted account with a public agency, bank or third party as further provided in the law.

Article 15.04.

In cases where a public offering statement is not required to be given, the Unit Owner shall furnished to a Purchaser copies of the Declaration, Bylaws and rules and regulations of the Association, and a certificate containing he following information:

(1) a statement of the amount of monthly assessments against the Unit and the amount of any unpaid Common Expense Liability currently due and payable from the Owner of the Unit.

(2) a statement of any other fees or charges payable by the Owner of the Unit;

(3) the most recent operating budget and financial statements of the Association;

(4) a statement of any capital expenditures anticipated by the Association within the following two years, including a statement regarding the status of reserve accounts and any special assessments that may be required;

(5) a statement regarding the insurance coverage for the Condominium;

(6) a statement of whether the Association has any knowledge of whether the Unit or the Condominium is in violation of any provisions of law or of the Declaration;

(7) A statement of any other material matters that may affect the financial health and stability of the Association.

(b) The Association shall provide the certificate required under paragraph (a) of this Article within [10] days of request from a Unit Owner.

(c) A Purchaser is not liable for any unpaid assessment or fee in excess of the amounts set out in the certificate of the Association prepared in accordance with this Section.

Article 15.05.

(a) Any sale of a Unit in violation of the requirement for a public offering statement or resale certificate may be declared null and void by a court of law upon application of a Purchaser at any time up to [1] year after completion of the sale.

(b) A Declarant or Unit Owner failing to provide a public offering statement or resale certificate, or making material misstatements in a public offering statement or resale certificate, shall be liable to the Purchaser for any financial claims or damages incurred by the Purchaser which could have been avoided by the Purchaser if complete and accurate information had been provided; provided, however, that the Association, and not the Unit Owner, shall be liable to a Purchaser for any erroneous information included in a resale certificate prepared by the Association.

(c) Local government is authorized to establish by regulation appropriate fines and penalties for violation of this Section.

Article 15.05.

Neither an offering statement nor a resale certificate need be prepared and provided in the case of:

(1) transfer of a Unit as a gift;

(2) a transfer pursuant to a court order;

(3) any transfer by a government or government agency acting in its capacity as such and not in a commercial capacity as Declarant with respect to a Condominium;

(4) a transfer by mortgage foreclosure;

(5) a transfer to a Person in the business of purchasing and selling Real Estate for his own account.

Article 15.06.

Any affirmation of fact or promise by a Declarant or Unit Owner to a Purchaser which relates to the Unit, its use, improvements, or rights appurtenant thereto, creates an express representation that the Unit and related rights, uses and improvements will conform to the affirmation or promise. A Declarant or Unit Owner shall be liable to a Purchaser for any damages to the Purchaser, financial or otherwise, arising from misstatements or inaccuracies in any such representation.

SCHEDULE C

MEMORANDUM

TO: **RAYMOND STRUYK, THE URBAN INSTITUTE**

FROM: **STEVE BUTLER**

RE: **STANDARDS FOR MORTGAGE LOANS ON APARTMENTS**

DATE: **OCTOBER 29, 1992**

While in the process of reviewing the status of proposals for condominium laws in the City of Moscow it occurred to me that it may not be too long before purchasers of apartment units start requesting mortgage loans.

Because of our work with lending institutions in Moscow I thought it might be worthwhile to set out some of the main legal issues regarding mortgage loans to apartment units in jointly owned buildings.

There are several points that should be made from the outset.

-- Apartments in jointly owned buildings are clearly different than freestanding homes (dachas). Management is subject to collective decision making. A lender that acquires an apartment unit in foreclosure will have significant constraints on its freedom of action.

-- The costs of managing and maintaining an apartment block are substantial and sound management depends on sound financial practices. Assessments must be reasonable and collection must be enforced. If the building begins to deteriorate, the lender cannot simply step in and pay for repairs itself, as it might do with a freestanding home. Not only are the costs too high, but there may be legal constraints as well.

-- Because of the legal and physical complexity of jointly owned buildings, the transaction costs of making loans in apartment blocks can be high until at least one loan in a building has been made. Transaction costs can be reduced by standardization of the legal structure of jointly owned buildings.

-- The essence of mortgage security is the rapid resale of a property acquired in foreclosure. To that extent, the marketability of apartment units would be

enhanced if the legal organization of jointly owned buildings was standardized.

-- In the long run, mortgage loans are themselves transferrable financial instruments. Standardization of the legal organization of jointly owned buildings standardizes also the security for the loans and enhances their transferability.

With these points in mind, the following describe the key underwriting concerns of US lenders when making loans on apartments in jointly owned buildings:

1. Are the physical property rights of the apartment owners clearly defined? Can a lender easily determine the physical characteristics (e.g. boundaries, equipment, etc.) of what is owned?

2. Are the rights to use and occupy the property, particularly common portions of the property, clearly defined? For example, are the rights to lease and transfer the apartment clearly set forth?

3. Are the financial obligations of the apartment owners with respect to common expenses clearly defined?

4. Are there strong procedures for enforcing collections of common expenses from apartment owners?

5. Are there requirements for creating financial reserves against unforeseen maintenance and repair costs?

6. Are there clearly defined decision making procedures for the common ownership association? Do the decision making procedures provide adequate checks against abuse of position or concentration of authority in too few hands?

7. Are the decision making criteria for major decisions, such as termination of the common ownership association or amendment to governing documents, sufficiently stringent to prevent ill considered actions?

8. Are the respective maintenance and repair responsibilities of the common association and individual owners clearly defined?

9. Is the right to mortgage an apartment clearly stated?

10. Are there reasonable provisions for notifying mortgage lenders of actions that might affect their mortgage security, including

- modification of charges for common expenses
- physical changes to Units or common areas
- financial difficulties of the association
- delinquencies in payment of common expenses

11. Do mortgage lenders have a right to participate in major decisions affecting Units on which they hold mortgages?

12. Are mortgage lenders adequately protected against modifications to important provisions of the organizational documents after the mortgage loan is made?

13. Is insurance coverage for the building required? Do the legal documents clearly define procedures for handling insurance proceeds in the event of damage or destruction to the building?

14. Are there provisions for termination of the association and sale of the property? Are the rights of lenders protected in such event?

15. During the period of transition from municipal ownership to full privatization, when there will be many mixed ownership buildings, are the rights and obligations of municipal authorities and enterprises clearly defined?

16. Are the rights and obligations of private development entrepreneurs with respect to management of the association clearly defined?

17. Is there an obligation for developers and sellers of units to provide accurate information potential purchasers regarding important aspects of the property and the governing system?

Obviously, there are many issues to be addressed in the legal organization of a jointly owned building. In the absence of a law setting out the basic principles for such organizations, it is likely that each joint ownership association may be governed by different principles.

Because the concepts involved are so new in Russia, I would also be concerned that the rights of mortgage lenders will not be adequately addressed in the organizational documents of the new associations. (In fact, the few charters I have seen make no mention of mortgage rights at all.)

I believe that interested lending institutions would enhance their own loan security, and the market for apartment mortgage loans, by encouraging the enactment of a comprehensive law dealing with all of these issues. I have prepared a draft of such a law, which I urge you to share with the bankers with whom you are working.

SCHEDULE D

MEMORANDUM

TO: MR SHAMUZAFAROV

FROM: MR BUTLER

RE: FUNDAMENTALS OF TOWN PLANNING LEGISLATION

DATE: OCTOBER 6, 1992

The following comments and the attached document are offered in response to the outline provided to me.

Generally, I think the outline is very comprehensive. If anything, it goes far beyond what I would normally include in an urban planning law, and I have mentioned where this is the case. However, your judgement of the deficiencies of existing law, and how they may be corrected in the urban planning law, is better than mine.

Of course, I cannot comment on the substance of the law until I see the draft. However, I have raised some of the issues that may arise under the various chapter headings of your outline.

SECTION 1

Chapter 1

For general comments on the interests of the state and public in town planning and the purposes of town planning see Section 1, Article 3 and Section 3, Article 3 of the attached draft.

I would include in any general statement the following concepts:

1. to place planning responsibility at the lowest level of local government that can achieve results economically and efficiently;

2. to create plans and procedures that allow flexible and rapid public response to changing market and social conditions affecting the use of land;

3. to respect the rights of private ownership and development of property to the maximum extent possible consistent with the state's interest in protecting the health, welfare and quality of life for all of its citizens, including those who do not own property;

4. to encourage responsible and creative proposals for development of privately owned property by private sector participants;

5. to create procedures that permit rapid and flexible responses to land development proposals from the private sector;

6. to provide a harmonious balance among the needs for residential, commercial, industrial ad agricultural land;

7. to expand possibilities for private ownership and development of land;

8. to create procedures for meaningful citizen participation in the decisions affecting land use without placing unnecessary burdens on the rights of private ownership and private initiative.

9. to provide clear and certain legal guidance to the owners and developers of real estate.

Chapter 2.

An important issue is whether any local government, regardless of its population and resources, will be permitted to assume responsibility for town planning. In the interests of economy and efficiency, some laws give planning responsibility only to local governments of a certain size. Planning for smaller localities is done by higher levels of government or by regional organizations. On regional planning organizations generally, see Section 5 of the attached draft. It may be that the Law of Local Government has already determined this issue.

An important principle is that the actions of authorized local planning jurisdictions are not subject to repeal by higher levels of government unless they violate higher laws, including planning responsibilities that higher levels of government may reserve to themselves, For example, planning regarding certain regional transportation systems, coastal areas, or other natural areas may be subject to the planning regulations of higher levels of government even if the particular land area falls within an authorized local planning jurisdiction. I believe the Law of Local Government reflects this principle, but perhaps it should be restated in the planning laws.

Some provision may be made for mandatory consultation among adjoining localities regarding land uses in one locality that may affect the other. See, for example, Section 6, Article 16 of the attached draft.

Chapter 3.

There are many laws and decrees either enacted or under consideration that deal with rights of property ownership. Generally, a law of urban planning assumes those basic rights, but does not define them. I would exercise great care not to modify or contradict these other laws and decrees in the urban planning laws, as to do so could cause confusion. If you are going to describe property rights in this law, perhaps you should do so by reference to other fundamental laws dealing with property rights.

If you think the existing laws and decrees do not adequately define property rights (for example, if you think the right to own property for commercial development is not clear) you may want to consider amending those laws or decrees rather than dealing with basic property rights in a law of urban planning.

This issue is within your judgement.

SECTION II

Chapter 4

A citizen's right to "choose" should be subject to the rights of all citizens to a well planned physical environment, and therefore subject to planning laws enacted in accordance with established democratic procedures. For example, there may be no right, or perhaps limited right, to construct a residence in an area appropriately zoned for industrial use.

Chapter 5.

My proposals for procedures to protect rights of participation and appeal are included in various provisions of the attached draft, to which you are referred. See for example, Section 6, Articles 2, 3, 4, 5, 12.

SECTION 3

Chapter 6, Article 40.

See Section 3 of the attached draft, regarding zoning.

Chapter 7, Articles 41 and 42

See my comments under Section 1, Chapter 3, above.

Chapter 7, Article 43.

It is not possible to compensate owners of property for all "losses" caused by public planning and zoning activities. Even in the US, which gives great attention to the rights of private property, owners are entitled to compensation only if (1) urban panning regulations deprive them of all reasonable economic use of their property, or (2) if they suffer damages because of unreasonable actions by the planning authorities intended to deprive them of their property rights, or (c) if planning authorities act with reckless disregard for property rights. Just because the uses to which a piece of land may be put is restricted under zoning laws, and its value therefore decreased, is not enough to claim compensation.

You must think very carefully about under what conditions normal planning procedures, conducted in good faith and in the interests of the public, will result in compensation to land owners.

Chapter 8, Article 44 and 45.

Generally, the location of major roadways and public utility infrastructure is not subject to local planning review, but rather to planning decisions made at a higher levels of government. Decisions on transportation and utility infrastructure may have too great an impact on regional economies to be left to local decision.

Some US States have dealt with this by creating transportation and utility planning councils at the state level. These councils operate much the same way as local planning councils, issuing regulations and holding public hearings on proposed infrastructure development of more than local significance.

Local utility infrastructure is generally not subject to detailed local planning control. Utility companies simply have general easements over local roads to provide utilities to any developments that occur in accordance with the local regulations.

The level of local planning control over infrastructure development may depend upon whether the utility is municipally owned or controlled or services only the locality. This is usually true of water and sewer utilities and sometimes electric. Localities may also be responsible

for planning purely local roadways and other systems of transportation.

Generally, the larger the area served by the facility, the higher the level of government that supervises planning.

SECTIONS 4 and 5

Because of the transitional nature of urban planning in Russia today, you may envision an active role for the federal government. For example, you might make enactment of local urban planning laws mandatory and subject to federal review. You could enact detailed federal laws dealing with technical aspects of building and zoning codes.

You are more knowledgeable than I about what is needed at this time. However, I believe that over a longer period of time you should try to remove the federal government from the planning process to the maximum possible extent.

As you know, under the US Constitution the States, not the federal government, are given legal authority over local planning. The German federal government, while enacting the law of planning, takes practically no role in local planning. France, a unitary state, once exercised strict central control over local planning, but since the mid-1980's has been relinquishing planning control to local governments.

In my opinion, the federal government's role in local planning should be limited to the following types of concerns:

1. Initially, enactment of the laws necessary to permit local planning efforts, which laws may include minimum procedural and technical standards.

2. Technical assistance to localities for the creation of local planning laws, systems and programs.

3. Reservation of the right to participate in planning of areas of national significance, including:

--sensitive environmental areas

--national resources such as parks and natural areas

--coastal, littoral and riparian areas

--flood control areas

--etc.

4. Creation of planning councils covering the territory of more than one Republic.

5. Establishment of councils for dispute resolution between or among independent planning jurisdictions.

6. Protection of the housing and other planning needs of designated groups, including the poor and the physically disabled.

7. Establish standards for matters of national significance that may affect local planning, including air and water pollution, disposal of hazardous and other waste material, etc.

8. Mandate plans for transfer of state owned land to private ownership. Plans, procedures and time schedules for such transfers could be approved by the federal government.

It should also be noted that the federal government can reserve the power to impose planning conditions on any of its financial aid to local government, and thereby have additional influence. For example, federal aid to local government for transportation infrastructure could be conditioned on a local transportation plan meeting federal standards. In the US, the federal government reserves the right to approve local plans for housing, health care, and transportation, as well as many other matters, as a condition of receiving federal financial aid for those purposes. The local government is free to reject the financial aid.

All planning authority not reserved by the federal government should be delegated to the local governments

Chapter 13

See the proposals for town planning procedures and structures in Sections 1 and 2 of the attached draft.

SECTION 7

Chapter 15

You might consider the concepts of how municipalities are able to expand their borders to absorb surrounding areas necessary for rational expansion of the municipality ("municipal annexation").

The process of municipal annexation is frequently a difficult political issue. It can be done in a number of ways, including: absolute legal authority of the municipality to annex surrounding suburbs, subject to conditions imposed by higher levels of government; voluntary agreements between municipalities and surrounding jurisdictions; popular vote of citizens in areas proposed for annexation; etc.

Chapter 16

While the federal law may describe the types of zones or districts that can be created in a local planning jurisdiction, it is my view that localities should be given a great deal of flexibility in creating such zones or districts. The number or types of districts may differ among jurisdictions.

Chapter 17

The land cadastre system, in my opinion, should be a responsibility of local government.

SECTION 8

Chapter 18

Town planning documentation produced by local governments generally include the following:

1. Plan of development. See Section 1 of the attached draft.

2. Zoning maps. See Section 3 of the attached draft.

3. Zoning regulations. See Section 3 of the attached draft.

4. Land subdivision regulations. See Section 2 of the attached draft.

5. Building regulations.

Building regulations are generally distinguished from zoning regulations. They consist of technical standards for building techniques and materials, including public safety issues such as fire protection. Under the US system building regulations are created and enforced by municipal building departments, and not by planning and zoning commissions. Building departments issue construction permits after all planning and zoning approvals are issued.

Town planning documentation prepared by private sector land developers consists of materials required by planning and zoning councils in applications for development permits, and may include:

1. Land subdivision plans;

2. Site layout plans;

3. Schematic architectural plans (aesthetics);

4. Traffic and environmental impact studies;

5. Site engineering (utilities, drainage, etc.) plans and studies;

6. Traffic circulation plans.

Building departments will require for issuance of construction permits complete architectural and engineering plans sufficient for construction.

The controlling planning documents at the local level are the zoning maps and regulations. The master plan of development, being more general and less flexible, is secondary to the zoning maps and regulations.

Subdivision plans and other documentation prepared by land developers, once approved, determine what uses and structures are actually put on a piece of land, but they are in the first instance subject to zoning maps and regulations.

All development proposals, even if approved by planning and zoning councils, are subject to building regulations.

Chapter 19

See Sections 1, 2, and 3 of the attached draft.

Chapter 20

See Section 3 of the attached draft.

Chapter 21

If by "allocation of plots of land for town planning activities" you mean procedures for transferring state owned land to private ownership, this is a policy matter on which

your ideas are as good as mine. I would be glad to give comments on actual proposals.

SCHEDULE E

SUGGESTED PROVISIONS FOR PLANNING AND ZONING LAWS FOR LOCAL GOVERNMENTS

SECTION I. LOCAL PLANNING COMMISSIONS

1. DEFINITIONS

2. CREATION OF LOCAL PLANNING COMMISSIONS

Authorized jurisdictions [having populations in excess of .....] are empowered to create local planning commissions or to designate existing local entities as local planning commissions.

Created by act of local governing body

Number of members

Alternate members

Method for selecting members

Official members without vote

Terms of office

Procedure for filling vacancies

Election of officers

Duties of officers

[Local governments lacking sufficient population to create a local planing commission shall fall under the planning jurisdiction of the next highest level of government or, upon application to and approval of [...] shall become part of a regional planning commission pursuant to the provisions of this law.]

3. PLAN OF DEVELOPMENT

The local planning commission is empowered to prepare and adopt the local master plan of development, which plan shall be a statement of policies and objectives for the physical, social, cultural and economic development of the municipality, and may include, without limitation:

maps;

explanatory material;

photographs;

charts and other pertinent data;

recommended programs for implementation of the plan;

budgets and schedules for capital projects;

recommended zoning and subdivision controls;

recommended building and safety codes;

recommended use of land for residential, commercial, industrial, recreational and other purposes;

recommendations for local transportation networks;

recommendations for location, relocation and improvement of public facilities;

recommendations for location and improvement of utilities, water and sewer;

recommendations for improvement or redevelopment of specific zones or districts;

commentary regarding physical, social, economic trends in human resources, education, health, housing recreation, cultural resources, etc.;

4. PUBLIC HEARING

Prior to adoption of the plan of development or any modifications or amendments to the plan the commission shall hold at least one public hearing. At least [ ] days prior to the public hearing a copy of the plan, amendment or modification must be filed in the [ ] and be made available for review by interested citizens.

5. ADOPTION OF THE PLAN.

The commission may adopt the plan and amendments or modifications thereto in their entirety by resolution, or by

successive resolutions adopt parts of the plan, amendment or modification, whether geographical or functional.

6. PERIODIC REVIEW OF PLAN

The commission shall review the plan of development in its entirety at least once in every [ ] years, and may at any time adopt such amendments or modifications to the plan as it deems necessary to update the plan to address change of policy or conditions.

7. PLAN IS ADVISORY ONLY.

The plan of development is advisory only and does not bind the local zoning commission unless otherwise specified in the local regulations.

8. MUNICIPAL IMPROVEMENTS.

No municipality or agency of a municipality shall construct, reconstruct, locate, relocate, abandon or extend any public property or improvement without first submitting a proposal to the local planning commission. The commission shall have [ ] days from the date of the submission to issue a report approving or disapproving the proposal, and failure to issue such a report shall be deemed to be approval. Any municipal improvement that is disapproved by the local planning commission must be subsequently approved by a vote of [ ]% of the local governing body before it may proceed.

SECTION II. SUBDIVISION OF LAND

1. SUBDIVISION OF LAND DEFINED.

Subdivision means the division of a tract or parcel of land into three or more parts or lots made subsequent to the adoption of subdivision regulations by the municipality, for the purpose, whether immediate or future, of sale or building development and includes resubdivision; "resubdivision" means any change in the map of an approved and recorded subdivision or resubdivision that effects street layouts, areas reserved for public use and access, or diminishes the size of or creates additional building lots.

2. SUBDIVISION REGULATIONS.

No subdivision of land may be made unless a plan of subdivision has been approved by the planning commission. The commission shall enact regulations governing subdivision, which regulations shall be subject to a public hearing before taking effect. The subdivision regulations shall assure that:

the land is to be of such a character that it can be used for building purposes without danger to health or public safety;

that proper provision is made for access, water, sewer, drainage, and flood control;

that proposed street and traffic circulation is in harmony with the existing system and the plan of development.

3. OPEN SPACE.

As a condition of subdivision approval the planning commission may require the provision of open space, parks and playgrounds, or, in substitution for requiring such facilities, the transfer a portion of the land to the municipality so that it may provide open space, parks and playgrounds; provided that the fair market value of the land to be transferred to the municipality may not exceed [ ]% of the value of the land to be subdivided.

4. CONDITIONAL APPROVAL OF SUBDIVISION PLANS.

The commission may condition approval of a subdivision and sale of any portion of the subdivided property upon the owner (inluding a municipality, if the municipality is the owner of the land) completing certain improvements to the property which, in the opinion of the commission, are necessary to protect the public health and safety and assure compliance with the purposes of the subdivision regulations, or may require the owner to file a bond or other acceptable guarantee of completion of such improvements, the amount of which bond would allow the municipality to complete the improvements in the event of the owners failure to do so.

5. RECORDATION.

Once approved and the time for the appeal of the approval has passed, the subdivision plan shall be returned to the owner bearing the signature of the chairman of he planning commission, and the owner shall record the subdivision plan in the land records of the municipality within [ ] days of its approval. Any plan filed without

the signature of the chairman or not filed in the required time shall be null and void unless an extension of such time is granted by the commission.

6. TIME FOR COMPLETION OF SUBDIVISION PLANS.

All work required by the commission in connection with an approved subdivision of land shall be completed within [ ] years from the date of approval of the plan, which time period shall be subject to extension at the discretion of the commission.

7. PUBLIC HEARINGS.

The commission may, in its discretion, hold a public hearing on a subdivision application, and shall hold a public hearing on an application for resubdivision. Hearings shall be conducted in accordance with the provisions of this law and local regulations.

8. BUILDING ON UNAPPROVED STREETS.

Any municipality having a planning commission shall have the right to prohibit or regulate the issuance of building permits for the erection of buildings or structures on unapproved streets, provided that no such prohibition shall apply to the issuance of a building permit for the construction of farm buildings which are not in violation of any lawful zoning or building regulations of the municipality. A building erected in violation of this prohibition may, by order of a court, be required to be vacated or removed, or construction halted. A person or firm erecting a building in violation of this prohibition may be subject to fines or penalties as may be established by the municipality.

9. RELATIONSHIP TO ZONING REGULATIONS.

The commission may not approve any use or aspect of a subdivision plan that is in violation of existing zoning regulations.

10. COMBINED PLANNING AND ZONING COMMISSIONS.

A municipality may designate a planning or zoning commission as the planning and zoning commission for the municipality, in which event such combined planning and zoning commission shall have all of the powers of planning and zoning commissions under this law.

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11. LOCAL COUNCILS AS PLANNING COMMISSIONS

In municipalities having populations of less than [...] the local governing body (council, soviet, etc,) may act as the planning commission.

SECTION III. LOCAL ZONING COMMISSIONS

1. DEFINITIONS

2. CREATION OF LOCAL ZONING COMMISSIONS

Authorized jurisdictions [having populations in excess of .....] are empowered to creat local zoning commissions or to designate existing entities as local zoning commissions.

Created by act of local governing body

Number of members

Alternate members

Method for selecting members

Official members without vote

Terms of office

Procedure for filling vacancies

Election of officers

Duties of officers

[Local governments lacking sufficient population to create a local zoning commission shall fall under the zoning jurisdiction of the next highest level of government or, upon application to an approval of [...] shall become part of a regional planning and zoning commission pursuant to the provisions of this law.]

3. AUTHORITY AND PURPOSES OF ZONING COMMISSIONS

The purpose of the local zoning commission is issuance and enforcement of rules, regulations and permits dealing with the use and development of land, for the following purposes:

to establish conditions and requirements for development necessary to protect the health, safety, convenience and property values of the citizens;

lessen congestion in the streets;

secure safety from fire, flood and other dangers;

promote health and general welfare;

to provide adequate light and air;

to prevent overcrowding of land;

to avoid unnecessary concentration of population;

to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public facilities;

to provide a suitable and pleasing physical environment by attention to the character of districts and their particular suitability to certain uses with a view to conserving the value of buildings and encouraging the most appropriate use of land.

to encourage protection of the environment, including the historical built environment;

to encourage the most efficient use of utilities;

4. REGULATIONS OF THE ZONING COMMISSION

Zoning commissions shall enact regulations for the purpose of implementing their responsibilities. which regulations may include the following, without limitation:

division of the jurisdiction into zones or districts of such number shape and area as they shall determine;

regulations dealing with the erection, construction, reconstruction alteration and use of buildings within the districts;

regulation of the height, number of stories and size of buildings and structures within the districts; the preservation of opportunities for residential, commercial and industrial buildings within the districts; population densities; building densities, including the amount of a site that may be occupied by

buildings and structures, and the requirements for yards, courts and other open spaces;

regulation of signage and other advertising structures;

Zoning regulations are to be enacted with consideration to the comprehensive plan of development enacted by the jurisdiction; provided that upon enactment of the zoning regulations, the plan of development shall be advisory only with respect to amendments, modifications or permits enacted or issued under the zoning regulations in accordance with this law and the zoning regulations.

5. PUBLIC HEARING

Zoning districts and regulations shall be enacted, modified or amended by local zoning commissions only after public hearing held in accordance with the provisions of this law and the local regulations.

6. SPECIAL PERMITS

The regulations may provide that certain types of buildings or uses of land will be permitted in specified districts only after obtaining a special permit from the zoning commission.

When under the zoning regulations a use or building is allowed only after obtaining a special permit from the commission, the commission shall hold a public hearing on the application for such permit.

Once granted, if construction under a special permit is not commenced within [ ] years from the date of issuance, and completed within [ ] years from the date of commencement, the special permit shall be null and void, unless the time for commencement and completion of construction is extended by the commission, in its discretion.

The terms of a special permit may not be modified by the commission without another public hearing.

7. STANDARDS FOR SPECIAL PERMITS

Local zoning regulations shall set out the standards for approval of special permits. A special permit may be granted after determination by the commission that the proposed use or structure is in harmony with the general

purposes and intent of the regulations. Standards for issuance of special permits may include the following:

density of use and bulk of buildings;

traffic volume, flow and control with reference to pedestrian and vehicular safety and convenience and access in case of emergency;

availability of mass transit facilities;

availability and compatibility of utilities;

adverse impact from noise, odor, fumes, dust and artificial lighting;

signs of size and design that are in harmony with the surrounding area;

adequacy of open space;

impact on neighboring properties, as compared to other uses and structures permitted in the district under the regulations;

existing land use in the area;

proximity of community facilities;

compliance with the zoning regulations and master plan of development;

environmental conservation;

existing violations on the property.

8. PROPERTY PLAN REVIEW

Notwithstanding that a particular use or building may be permitted in a district, the zoning commission may require that a property plan be submitted to the zoning commission to aid in the determination of whether or not a particular type of proposed building, use or structure conforms to the zoning regulations. Types of permitted buildings, uses or structures requiring property plan review by the commission shall be clearly identified in the local regulations. A property plan review may be with or without public hearing, at the discretion of the Commission.

Once granted, if construction under an approved property plan is not commenced within [ ] years from the date of issuance, and completed within [ ] years from the date of commencement, the property plan shall be null and

void, unless the time for commencement and completion of construction is extended by the commission, in its discretion.

9. STANDARDS FOR PROPERTY PLAN REVIEW

A property plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning regulation. Approval may be granted after determination by the commission that the proposed use or structure is in harmony with the general purposes and intent of the regulations. The commission may deny the property plan application, approve it, or approve it with modifications. As a condition of its approval, the commission may require the property owner to post a bond to assure compliance with any modifications to the plan required by the commission.

Local zoning regulations may set out specific standards for property plan approval consistent with the intentions of this law.

10. APPLICATIONS FOR ZONING CHANGES

Any citizen, group of citizens or municipal department may file with the zoning commission an application for a change in zone boundaries or zoning regulations.

11. ENFORCEMENT OF ZONING REGULATIONS

The zoning commission shall provide by regulation for the manner in which zoning regulations are to be enforced, including

legal action to prohibit occupancy of a building;

legal action to require removal of a building or structure;

fines and penalties;

in cases of willful violation of health and safety regulations, criminal prosecution.

Municipalities shall designate an official reponsible for the enforcement of zoning regulations (the "zoning enforcement officer"), which official shall not be a member of a planning or zoning commission.

12. ISSUANCE OF BUILDING PERMITS

No building permit or certificate of occupancy shall be issued by any municipal department for a building, use or structure without a certificate of the zoning commission that the proposed building, use or structure complies with the zoning regulations or is a valid non-conforming use.

13. REFERRALS TO PLANNING COMMISSION

In jurisdictions in which there exist separate planning and zoning commissions, proposed changes to the zoning boundaries or regulations shall be submitted to the planning commission no less than [ ] days prior to the scheduled date of the public hearing for such proposed change. The report of the commission on such change shall be included in the records of the hearing on such change, and failure of the planning commission to file such report shall be deemed to constitute approval. A proposed change disapproved by the planning commission may be adopted by the zoning commission only by a vote of not less than 60% of the members of the zoning commission.

14. REFERRALS TO OTHER MUNICIPAL DEPARTMENTS

Zoning commissions may [shall] refer applications or pending actions to other municipal departments for review and comment.

SECTION IV. BOARDS OF ZONING APPEALS

1. CREATION OF BOARD OF ZONING APPEALS.

There shall be created a zoning board of appeals, which shall be independent of the zoning commission and none of the members of which shall be members of the planning or zoning commissions.

number of members

method of election or appointment

terms of office

provision for vacancies

election of officers of board

2. POWERS OF BOARD OF APPEALS.

The board of zoning appeals shall have the powers to:

(1) hear and decide appeals where it is alleged that there is an error, in any order, requirement or decision of the officer charged with the enforcement of the zoning regulation, and

(2) determine and vary the application of the zoning regulations in harmony with their general purpose and intent and with due consideration to preserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such regulation would result in such exceptional difficulty or unusual hardship that substantial justice would not be done.

Notwithstanding the right of he board of zoning appeals to modify the application of the zoning regulations, the zoning regulation may specify the extent to which particular uses shall not be permitted by action of the board of appeals in districts in which such uses are not otherwise allowed under the zoning regulations.

3. REQUIREMENTS FOR APPEALS.

Any person aggrieved by the act or decision of a zoning enforcement officer and any property owner seeking relief from a provision of the zoning regulations may take an appeal to the board of zoning appeals. The board of zoning appeals shall enact regulations governing the procedures for such appeals.

All appeals to the board of zoning appeals shall be heard at a public hearing. Pending disposition of an appeal, the board of zoning appeals may prohibit further action on the property.

In cases involving the appeal of an action of a zoning enforcement officer, the zoning enforcement officer shall submit to the board complete copies of his official records pertaining to the matter appealed.

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SECTION V. REGIONAL PLANNING

1. CREATION OF REGIONAL PLANNING COMMISSIONS

Within any planning region of a [Republic, oblast, kray, etc,] as defined by the [Republic, oblast, kray, etc.] there may be created a regional planning commissionby act of the governing bodies of two or more municipalities within such planning region, provided that at least [ ]% of eligible municipalities within such planning region shall agree to join such regional planning commission.

Participating municipalities shall have representation on the governing board of the regional planning commission in accordance with a formula or formulas to be determined by the [Republic, etc.]. Where a planning commission or combined planning and zoning commission exists in a municipality pursuant to this law, at east one member of the regional planning commission from that municipally shall be appointed by he local planning commission or combined planning and zoning commission. All other representatives are to be elected or appointed in such a manner as the governing bodies of the participating municipalities shall provide.

election of officers

adoption of bylaws

meetings

accounting and annual reports

2. JURISDICTION

The area of operation of a regional planning commission shall be coterminous with the area of such planning region as defined by the government of the [Republic, etc.]; provided that any municipality that is not included in such planning region may petition the commission for membership. Such petition shall be submitted to the [Republic, etc.] and, if approved, the petitioning municipality shall become a member of the regional commission.

3. PLAN OF DEVELOPMENT; ASSISTANCE TO MUNICIPALITIES

Each regional planning commission shall make a plan of development for its region, showing its recommendations for the general use of the area, including land use, housing, principal highways and roads, bridges, airports, parks, recreation areas, schools, public institutions, public

utilities and such other matters as, in the opinion of the commission, would be beneficial to the region. Regional plans of development shall be based upon studies of physical, social, economic and governmental trends and conditions and shall be designed to promote with the greatest efficiency and economy the coordinated development of the region and the general welfare and prosperity of its people.

Before adopting a regional plan of development the regional planning commission shall hold at least one public hearing, the date, time and place of which shall be published in a newspaper of substantial general circulation in the region not more than [ ] days nor less than [ ] days before the date of such public hearing.

The regional plan of development shall be adopted by an affirmative vote of not less than a majority of the representatives to the commission.

A copy of the regional plan of development shall be provided to the clerk of each municipality and to the secretary of each municipal planning commission within the region.

The regional planning commission shall assist municipalities within its region and may assist other private and public agencies in developing and carrying out any plan or plans of such commission.

The regional planning commission may provide administrative, management, technical or planning assistance to municipalities or other public commissions or agencies within its region under such terms as it may determine. The regional planning commission may be compensated by the municipality or other pubic commission or commission for all or part of the costs of such assistance.

4. LEGAL EFFECT OF REGIONAL PLAN OF DEVELOPMENT

A regional plan of development shall be advisory only with respect to the planning and zoning activities of any authorized municipality undertaken by such municipality under this law.

5. DESIGNATION AS MUNICIPAL PLANNING AND ZONING COMMISSION

Municipalities that are members of a regional planning commission may designate the regional planning commission to serve as the planning and zoning commission of the municipality. Activities of the regional planning commission caried out pursuant to such a designation shall

be conducted in accordance with the provisions of this law regarding the activities of municipal planning and zoning commissions.

6. SOURCES OF FUNDS.

Any regional planning commission is authorized to receive and to use for its own purposes funds from any source, including the federal government and the government of the [Republic, etc.]. Primary budget responsibility for regional planning commissions shall be with the participating municipalities, which shall annually contribute to the operations of the regional commission in accordance with a dues formula to be determined by the commission.

Within the limits of amounts received by the commission, the commission may engage employees and contract with professional consultants in the performance of its purposes.

SECTION VI. GENERAL PROVISIONS

1. PUBLIC AGENCIES

All boards or commissions created pursuant to this law are independent agencies of the municipality for which they are created. The regulations and decisions of such boards or commissions shall be binding upon the municipality and its departments. Municipalities and their departments shall have the right to appear at proceedings of such boards or commissions to present evidence or testimony and to appeal the decisions of such boards or commissions in the same manner as any other interested party.

Boards or commissions created under this law shall be the budgetary responsibility of the municipality for which they are created and shall be staffed as the municipality provides.

2. PUBLICATION AND OTHER NOTICE

All regulations of boards and commissions created under this law are to be made available in printed form to the general public at reasonable price.

Whenever a public hearing is required under this law for any action of a board or commission, or if not required, a public hearing is held at the discretion of the board or commission, notice of the date, time, place and subject

matter of the public hearing shall be published in a newspaper of substantial general, daily circulation in the jurisdiction. Such publication must be made no earlier than 10 days, and no later than 3 days, prior to the date of the hearing.

With respect to hearings on applications for specific properties, at least 15 days prior to the scheduled date of the public hearing the applicant shall (1) post notice of the date, time, place and subject matter of the public hearing at a conspicuous place on the property, and (2) send notice of the date, time, place and subject matter of the public hearing by regular mail to all owners of property abutting the property that is the subject of the application and to all property owners within a radius of [ ] meters of the subject property. Ownership and addresses of owners of property shall be determined from the local land records, and such notice shall be waived for any property for which such information cannot be determined form the local land records.

Notice of all decisions of boards or commissions created under this law shall be published in a newspaper of substantial general, daily circulation in the jurisdiction within [ ] days of the date of such decision. In the event that the board or commission fails to publish notice of decision on a particular application within the specified period of time, the applicant may publish such notice. Decisions of boards and commissions shall not become effective until 15 days following the date of publication.

3. RECORDS OF PROCEEDINGS

All boards and commissions created under this law shall keep accurate minutes and records of meetings, hearings and other proceedings, which minutes and records shall be available for inspection by the public.

4. HEARINGS

All public hearings conducted under this law and the local regulations shall be conducted in accordance with the following requirements:

all interested parties, including citizens, applicants and municipal departments, may appear at the hearing to present evidence for against the pending action, including the testimony of experts;

interested parties appearing at a hearing shall have the right to question applicants or experts presented by any party;

all interested parties shall have the right to be represented by agents or attorneys.

all hearings shall be conducted in accordance with procedures and rules established and published by the board or commission.

5. TIME LIMITS FOR HEARINGS AND DECISIONS

All hearings shall be commenced within [ ] days of the date of receipt of an application, request, petition or appeal. For purposes of this law, the date of receipt shall be the date of the next regularly scheduled meeting of the commission or board, or [ ] days after the date of submission, whichever is sooner.

All hearings shall be completed within [ ] days of the date of commencement

All decisions shall be rendered within [ ] days of the date of completion of the hearing.

With respect to any matter for which no public hearing is required or, at the discretion of the commission or board, conducted, a decision shall be rendered within [ ] days of the date of receipt of the application, petition, plan, request or appeal.

In the event that commencement of a hearing is dependent upon a prior hearing and decision of another board or commission, for example an environmental review board, the time period for a decision shall be extended for [ ] days beyond the date of the decision of the other board or commission.

An applicant may consent to an extension of the time periods set out in this law or may withdraw his application, petition, request or appeal at any time before decision, without predjudice.

If the commission fails to take action on an application, petition or appeal within the specified time limits, the application, petition or appeal shall be deemed approved.

6. FORM OF APPLICATIONS

Each board or commission shall set out in regulations the form and technical requirements for applications, petitions, requests or appeals to the board or commission.

7. FORM OF DECISIONS

Decisions of boards or commissions shall be in writing and shall set out: an adequate description of the property, if applicable; the reasons underlying the decisions; reference to the specific laws and regulations which the decision addresses and on which it is based; any modifications or requirements imposed upon approved applications; any improvements to property required by the decision; such other matters as the board or commission may deem necessary or desirable.

8. MAJORITY RULE

No decision of any board or commission created under this law may be taken unless 60% or more of the members are present and voting. Unless otherwise specified in this law, all decisions of boards or commissions created hereunder will be made by majority vote of the members of the board or commission in attendance at the meeting at which the vote is made.

9. RECORDATION

All decisions with respect to variances to the zoning regulation, special permits, property plan approvals, and subdivision approvals, together with a description of the property to which they apply, the name of the record owner of the property, and a description of the particular regulation which is modified or varied, or under which the action is taken, shall be recorded in the land records of the municipality and shall become a part of the history of the property.

No variance to the zoning regulations, special permit, property plan approval, or subdivision approval shall be deemed effective until recorded in accordance with this provision.

10. STANDARDS OF DECISION

The regulations of boards and commissions shall set out clear standards under which specific types of applications, petitions and appeals will be considered and decided.

11. RIGHTS OF APPEAL

Any (a) officer, agency, department or bureau of the municipality charged with enforcing the zoning regulation or

decision of the commission or board; (b) any person whose petition or application to the board or commission has been denied; or (c) any person whose property abuts the property at issue or is within a [ ] foot radius of that property, may appeal the decision of a board or commission created under this law to a [court of general jurisdiction].

All appeals must be taken within 15 days of the date of publication of the decision of the board or commission, or they will be disallowed.

Procedures for taking the appeal shall follow procedures for civil actions generally under the law of the local jurisdiction, provided that appeals of the decisions of commissions and boards shall be considered priority matters and shall be given precedence unless cause is shown to the contrary.

The court may order that further action on the property cease until an appeal has been completed.

The commission or board shall be obligated to transfer to the appeal tribunal the complete public record of the application or other matter in dispute.

The decision of the appeals tribunal shall be based on the record unless the tribunal deems the record to be insufficient to do justice in the matter, in which event the appeal tribunal may accept additional evidence and testimony.

The court shall uphold the decision of the board or commission unless it is shown that the action of the board or commission (a) is a violation of the laws of the jurisdiction or any superior jurisdiction; (b) a violation of its own regulations or the superior regulations of any other level of government; (c) clearly arbitrary, unreasonable, and without a foundation in fact found in the record of the decision proceedings. In matters of a legislative nature within the discretion of the local board or commission, the appeals tribunal shall refrain to the maximum possible extent from substituting its judgement for the judgement of the local board or commission.

The appeal tribunal may reverse or affirm the decision, wholly or partly, or modify the decision appealed from, or remand the matter to the board or commission for further proceedings in accordance with its instructions.

The decision of the appeals tribunal may be appealed to a higher court.

The right to appeal shall be liberally interpreted so as to achieve substantial justice, provided that there will be no waiver of the time limitation in which appeals must be brought.

The right to appeal the decisions of local zoning and planning authorities, whether or not they adopt the provisions of this law, shall apply to all municipalities and other jurisdictions, notwithstanding any local laws to the contrary, which laws are hereby declared null and void.

12. DISQUALIFICATION OF MEMBERS

No member of a commission or a board of appeals shall participate in the hearing or decision of a matter in which he is directly or indirectly interested in a personal or financial sense, nor shall such member appear for or represent any applicant or other interested party in any such hearing.

13. CONFLICTING STANDARDS

In the event that the provisions of any local regulation enacted pursuant to this law require higher and greater standards than the provisions of any other law or code, then the provisions enacted under this law shall govern. In the event that the provisions of such other law or code are higher or greater, than the provisions of such other law or code shall govern.

14. NONCONFORMING USES

Any building, use or building lot legally in existence prior to the enactment of this law shall be a valid and legal nonconforming use and shall not be required to conform to the provisions of the regulations enacted pursuant to this law; provided, that in the event that such use is abandoned or terminated for a period of more than [ ] years, or in the event of damage or destruction of more than [ ]% of a nonconforming building or use, any further development or redevelopment of the property will be subject to local regulations. Expansion of a nonconforming use shall not be permitted after enactment of this law except by variance granted by a board of zoning appeals.

15. EFFECT OF CHANGES ON PRE-EXISTING STRUCTURES, APPLICATIONS AND PERMITS

No change in the local regulations enacted pursuant to this law shall be effective against (a) a use, building or

structure existing or in construction pursuant to a valid permit issued before the effective date of the change; (b) a valid application submitted for consideration and accepted by the commission prior to the date of such change; (c) a property plan approval or special permit issued prior to the date of the change and still in effect; and (d) a plan of subdivision or application therefore submitted and accepted by the board or commission prior to the date of the change.

16. ADJOINING JURISDICTIONS

The planning and zoning commissions of a municipality shall notify an adjoining municipality of any application or pending matter that affects property within 500 feet of the boundary of such adjoining municipality or will otherwise affect the adjoining municipality with respect to traffic and roadways; drainage and sewerage flow from the site; or water runoff. No hearing may be held on any such application until such notice has been provided to the adjoining municipality, and such adjoining municipality shall have the right to appear and be heard at any hearing on such application.

Whenever a subdivision of land is planned, the area of which will abut or include land in two adjoining jurisdictions, the planning commission shall, before approving the plan, submit the plan to the regional planning agency, if one exists, for comments. the regional planning agency shall have [ ] days in which to review the plan and submit a report, and failing to do so in the specified period the plan shall be deemed approved by the regional planning agency. A report of the regional planning agency shall be purely advisory.

17. RIGHTS OF SUCCESSORS

The rights under any permit, variance, or approval granted by a board or commission pursuant to this law and the local regulations shall attach to the land and bind or benefit, as the case may be, succeeding boards, commissions and owners of the property to which the permit, variance or approval attaches.

SCHEDULE F

APPROACHES TO GUIDING AND FINANCING SUBURBAN RESIDENTIAL DEVELOPMENT

MR. RAYMOND STRUYK
MR. STEPHEN BUTLER

THE URBAN INSTITUTE
12/5 FURKASOVSKY PER
MOSCOW

The essential elements of large scale suburban development are planning control and financing of land development infrastructure.

RESPONSIBLE LEVEL OF GOVERNMENT

What level of government should be responsible for planning suburban development and financing infrastructure?

Suburban development occurs in the areas surrounding existing cities. There may or may not be a governmental unit with jurisdiction over the land and having also the resources, will or expertise to guide and finance large scale suburban development. Possibilities include:

1. The unit of local government having jurisdiction over the area in which the land is located. This would generally be the preferred solution. However, frequently the government having immediate jurisdiction over the land lacks the resources or technical expertise necessary for large scale planning or infrastructure development.

Additionally, suburban jurisdictions may lack the incentives to encourage large-scale residential development. They may not be facing the same growth pressures as the center cities. Housing development may also bring additional financial burdens to local governments without guarantees of sufficient additional tax revenues to cover the costs of physical and social infrastructure

Before embarking on a program of suburban expansion, it would be necessary to think carefully about allocation of the relative financial benefits and burdens caused by the expansion, and identify the mutual interests of the various political jurisdictions.

2. Special development districts created under the laws of the Republic, oblast, etc., which would be corporate entities acting in the public interest, having the authority to plan and finance specified aspects of suburban land development. Such districts could be regional in scope or created for more limited development areas, and would have the power to issue financial obligations and impose taxes to support infrastructure development costs.

Special districts may be established by one or more suburban jurisdictions, by suburban jurisdictions and adjoining municipalities, or by act of a higher level of government. All political jurisdictions within the special district could be represented in its management.

It is typical in the US system, for example, for special districts to be created for local infrastructure such as water and sewer, but also for social infrastructure such as education.

3. Specific agreements between a municipality and a surrounding suburban jurisdiction for joint supervision, financing, and tax sharing within specified development areas located on the edge of the municipality.

Specific agreements of this sort could deal with the physical extension of municipal utilities into suburban areas as well as provision of municipal services, including for example, solid waste disposal, municipal transit, police and fire protection.

4. Municipal annexation of surrounding suburban areas under procedures established under the laws of the Republic,

oblast, etc. Depending upon the circumstances, this can be a politically volatile undertaking. Annexation is perhaps most relevant to unincorporated and undeveloped areas of the larger political jurisdiction in which the city is located, and not necessarily to existing towns and villages.

Annexation powers could perhaps be authorized under federal law for the major cities -- those suffering from the greatest growth pressures. The scope and procedures of local annexation powers would be defined by law. In many instances it might be essential to consider the wishes of the people living in the areas proposed for annexation, perhaps by submitting the issue to local referendum.

PLANNING

The key to rational suburban development is planning control over the subdivision of large areas of land. Subdivision control consists of a detailed public review and approval of how the land is divided into building lots, with attention to such matters as:

1. overall suitability of the land for residential construction, including environmental concerns;

2. the most efficient and economical extension of existing utility infrastructure; to conserve resources large scale land development should only be encouraged in those areas that permit economical extension of existing utility infrastructure.

3. internal road and transportation systems and their connection to existing systems;

4. provision of public infrastructure such as schools, police and fire protection; and

5. provision of commercial infrastructure serving he newly developed residential areas; housing should be located in convenient proximity to jobs, and vice versa. Large scale suburban development should be envisioned as self sustaining in the long run, having

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sufficient economic, social and cultural base to achieve a degree of independence from the central city.

In the US system, land subdivision regulation by local government is the primary means of public guidance of newly opened development areas. Building lots may not be created or sold from large tracts of land that have not undergone the subdivision review process of local government.

The land subdivision regulatory process could be administered by a regional authority that represented the combined interests of the surrounding jurisdictions, or could be subject to regional review only on projects of regional significance.

A special type of subdivision control that may be of particular usefulness in Russian suburbanization is the "new town" concept. "New towns" are very large master planned communities housing thousands of families. Such projects would be subject to broad, flexible master plans devised by the land developer and approved by local government.

Within the master plan, the "new town" developer is given substantial discretion for timing, design and location of specific structures and facilities, allowing rapid response to changes in market forces. While usually under the control of a single developer, planned communities generally make land available to other development entrepreneurs, subject to planning guidelines, for development of specific residential projects.

FINANCING

It is assumed that financing for housing construction will be arranged by the land developers and home buyers. Other than the creation of housing to meet social needs, governmental units would be concerned primarily with infrastructure costs.

Infrastructure financing options include:

1. Impact and connection fees charged to land developers and roughly based on the costs of public physical and social infrastructure. Such fees are usually calculated as a fee per each home or square meter of commercial floor space built by a developer and are paid either upon commencement of construction or occupancy of a structure.

Impact or connection fees are essentially user taxes that will be passed through to home buyers or renters, or the renters of commercial space, in the form of higher home prices or rents, to the extent permitted by the market. The size of impact or connection fees is a matter for the local jurisdiction to decide based upon a fair assessment of the relative financial burdens that should be borne by individual home buyers or renters, on the one hand, and the collective financial burdens that should be assumed by government and supported by general tax revenues.

2. Developer financing. Under the US system for, example, developers of large scale suburban residential projects are frequently made responsible for the full costs of extending utility infrastructure to the land, and are almost invariably required to finance infrastructure within the boundaries of the development project. Financing arrangements are made directly among the land developer and the utility companies.

Again, these costs are essentially user taxes that will be reflected in home prices and rents, to the extent permitted by the market.

3. Municipal Finance. Infrastructure may be financed directly by the local government through the issuance of long term bonds. Such bonds could be general obligations of the government, and repayment supported by general tax revenues, or could be secured and repaid from specific

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assets and cash flows of the municipality or municipal utility.

3. Special taxing districts. The special taxing district is a limited purpose political jurisdiction created to finance infrastructure development. In the US special districts are commonly created to provide water and sewer infrastructure, but can exist for a variety of public purposes.

The special taxing district borrows to finance utility infrastructure, usually through issuance of long term bonds, and repays the borrowing through special taxes imposed on the land in the new residential developments. The special district taxes are obligations of the individual home owners, and are generally paid in addition to other property taxes.

It should be clear that whatever means of financing infrastructure is chosen -- impact fees, special taxing districts, developer financial responsibility -- the costs of development should largely be passed through to home prices and rents as a means of imposing discipline on the market. In a free market only the most cost efficient infrastructure development would be undertaken, as inefficient and high cost infrastructure expansion would place the new housing and commercial development at a market disadvantage.

SCHEDULE G

MEMORANDUM

TO: MR. ZORDONSKY, CHAIRMAN, COMMISSION ON BUDGET, PLANNING AND TAXES, THE SUPREME SOVIET

FROM: STEPHEN B. BUTLER, THE URBAN INSTITUTE

RE: THE LAW ON MORTGAGE

DATE: NOVEMBER 10, 1992

I have reviewed the draft of the Law On Mortgage which you provided to us and have the following comments:

GENERAL COMMENTS

1. The relationship between this law and the existing Law on Pledge is unclear.

The Law on Pledge deals with all forms of secured transactions, but applies also to real estate mortgages. Is the draft Law on Mortgage to provide further guidance on real estate mortgages? For example, there are ambiguities in the Law on Pledge that could be resolved in this Law on Mortgage. Those ambiguities are further discussed in my memorandum of August 14, 1992 to Mr. Shamazufarov of Minstroy, a copy of which has been provided to you.

This draft Law on Mortgage provides very little additional guidance beyond what is included in the Law on Pledge. In several instances it contradicts provisions of the Law on Pledge. For example, assignment or transfer of a mortgage is permitted in the Law On Pledge (Article 27) but apparently not permitted in the draft Law on Mortgage (Article 2 (6)).

Similarly, the Law on Pledge specifically allows mortgage of lease rights (Article 19 (4)), but the draft Law on Pledge does not mention lease interests in real estate as objects of mortgage.

The draft Law on Mortgage could be an opportunity to further develop and clarify the concepts in the Law on Pledge, resolving ambiguities where appropriate. At least, the draft law should be closely reviewed against the Law on Pledge to be sure that there are no contradictory or confusing provisions.

2. The following are examples of the concepts that do not appear to be addressed in sufficient detail in either the Law on Pledge or the draft Law on Mortgage:

(a) **Future Advances**. The Law on Pledge provides that a mortgage may be made with respect to advances of funds to be made at some time in the future (Article 4 (3)). In fact, most construction mortgage loans require this. However, the rights of intervening creditors are not discussed in the law. Does the mortgage for future advances have priority over the claims of all intervening creditors? What if the intervening creditor also has a mortgage?

The issue of future advances also touches on the question of what advances by the mortgagee will be protected by the mortgage? What if the lender is forced to make expenditures to maintain, repair and insure the property? Will these amounts have priority over the claims of other creditors even if they are not specifically included in the amount of the mortgage?

There should be a better description of the many categories of advances that are included in the protection of the mortgage, and the conditions under which they are protected or in which the rights of another creditor may intervene.

(b) **Negative Amortization**. It is likely that various residential mortgage schemes in Russia may be based on adjustable interest rates or the accrual of some portion of interest payments, which accrued interest will be added to the outstanding principal balance of the loan. Consequently, the outstanding amount of the loan at some point in the future may be greater than the original amount of the loan, which would raise issues under the provisions of the draft law on Mortgage which require that the maximum amount of the mortgage obligation be set out in the document (See, for example, Article 5).

Because of the importance of adjustable interest rate and accrued interest mortgage programs to encourage residential mortgage lending, you should consider specifically authorizing variations on typical mortgages, including adjustable interest rate mortgages and accrued interest ("negative amortization") mortgages.

A typical provision that you might consider adding to the draft law could read as follows:

(a) A mortgage may secure an obligation on which the rate of interest may be changed from time to time in accordance with the agreement of the mortgagor and mortgagee, and the protection of the mortgage shall extend to all interest due and payable on such obligation.

(b) Any mortgagee may contract with a mortgagor in connection with a mortgage loan for the interest on such loan to be paid currently or to accrue, and, if such interest is to accrue, for such accrued interest to be added to the principal mortgage debt on which interest may be charged or collected. Such accrued interest which is added to the principal mortgage debt shall be secured by the mortgage to the same extent as the original principal of such mortgage debt.

(c) **Rights of other Parties**. You might consider making some provision for the rights of third parties affected by the mortgage transaction, including persons who purchase rights under a note and mortgage ("assignees"), purchasers and lessees of the real estate.

For example, will the assignee of a mortgage and note take the mortgage subject to any defenses of the mortgagor? (The Law of Pledge states that the rights under a mortgage are dependent on the rights with respect to the underlying debt.) Will this area of the law be addressed in the law on negotiable instruments (notes, bills, checks, etc.)?

If the real estate is sold, can the mortgagee demand repayment of the entire loan ("accelerate"), or must he allow a transfer of the loan to the new owner of the real estate? Is this a matter for agreement between the parties?

What are the rights of a tenant in a mortgaged property if the mortgage is foreclosed? Does it make a difference if the lease was signed before or after registration of the mortgage?

(d) **Contents of the Property**. The Law on Pledge states that the mortgage includes the "contents" of the property. The draft law states that the mortgage covers the real estate only, unless otherwise agreed between the parties. To avoid conflict between the two laws, you might define "contents" to include only those items that cannot be removed without damage or interference with the use of the real estate for its intended purpose.

(e) **Foreclosure Proceedings**. Neither the Law on Pledge nor the draft Law on Mortgage gives detail on the procedure for claiming against and selling mortgaged real estate ("foreclosure"). Are these matters covered by other civil procedural legislation of the Russian Federation? Issues include the requirements for formal notice to mortgagors and other creditors and the rules regarding the auction of properties (for example, will it be necessary to publish notice of the auction in newspapers? will the mortgagee be permitted to bid at the auction sale to protect its interests?). Will the court issue a foreclosure deed to the auction purchaser? Will that deed be incontrovertible?

Another issue is the distribution of proceeds from sale of the real estate. The law says that the claims of senior mortgagees have priority over those of second mortgagees, and that the remainder, if any, is to be returned to the mortgagor. What about the other costs associated with the property, for example the costs of the auction sale; the legal costs of the mortgagee; the mortgagees costs of maintaining, insuring and repairing the property prior to auction sale; amounts owed to the government for property taxes; amounts owed to associations for common charges in apartment buildings; etc.?

(f) **Judgements for Deficiencies**. What if the auction proceeds are insufficient to pay off the outstanding debt and costs? The Law on Pledge states in Article 29 that the mortgagee has the right to collect the deficiency against other properties of the mortgagor. What if those other properties are not described in the mortgage? What if they are subject to other mortgages?

How is the amount of the deficiency calculated? Is the calculation subject to supervision of the court? Must the mortgagee obtain a separate judgement of the court to collect the deficiency? If the mortgagee bids for and acquires the property in the foreclosure sale, must it bid up to the full amount of its outstanding mortgage? If so, can there be a deficiency judgement? If the mortgagee is permitted to bid less than the amount of the mortgage, can there be a deficiency judgement?

(g) **Acceleration of Debt; Right to Cure Defaults**. The Law on Pledge states that a mortgagor can cure its default on a loan repayable by periodic installments by paying the installment then due. At what point is this right terminated? Can the default be cured after the property is placed up for auction? Can the default be cured after the property is auctioned but before title is conveyed to the new owner? Who will pay the costs of the mortgagee incurred in the foreclosure proceeding?

Some point in time should be set for terminating the rights of the mortgagor to cure defaults. Also, if a mortgagor persistently fails to make payments when due, the mortgagee should have the right to accelerate the loan.

3. What purpose is served by drawing distinctions between mortgages on the basis of the type of real estate mortgaged? In a market system there is no legal difference between the mortgage of a personal residence and the mortgage of an industrial building or piece of land.

4. This law should be limited to issues of mortgaging real estate; other issues may best be covered in other laws. Two examples are the provisions for land registration, which should be covered in a more comprehensive way in a law of juridical cadastre, and the provisions dealing with mortgages of enterprises as single entities.

With respect to enterprise mortgages, why not let mortgagees and mortgagors decide what property will be mortgaged and subject to foreclosure? By requiring that mortgaged enterprises be sold as an integral unit, they may have less value, and provide less protection to a mortgagee, than sale of individual properties of an enterprise. If a business is failing to pay its mortgage, it may be because it is failing as an operating business. What are the prospects for selling it then as an operating business?

Perhaps many of the concepts of the enterprise mortgage should be dealt with in a law of bankruptcy of enterprises.

SPECIFIC COMMENTS

ARTICLE I

(1) Real estate should be defined to include lease and other interests in real estate. A lease can be the object of a mortgage. The mortgagee takes a secured interest in the right to use and occupy the property for the term specified in the lease. This is an important concept, as much of the redevelopment of urban areas such as Moscow is apparently taking place on property leased from public authorities for long terms.

Similarly, the owner of an apartment in a condominium or other jointly owned building can subject his interest in the common areas to the lien of his apartment mortgage.

ARTICLE 2

(4) Mortgaging jointly owned property should be subject to laws governing condominiums and other forms of commonly owned housing. While no such law exists in Russia now, one may be enacted in the future. A condominium law may allow mortgaging of jointly owned property upon a vote of less than all of the joint property owners.

(5) This provision should be subject to laws on condominiums and other forms of jointly owned property. In a condominium the apartment owner owns also an undivided interest in the common areas. That undivided interest in the common areas can be subject to the apartment owners mortgage and is permitted under Article 7 (2) of the Law on Pledge

(6) My translation states that mortgage certificates cannot be transferred to other parties. Is this meant to prohibit the assignment of rights in mortgages? Mortgage loans are financial instruments that in developed markets are freely traded and sold among financial institutions. Accordingly, the rights under a mortgage should also be freely transferrable along with the underlying mortgage obligation. The Law on Pledge allows the free transferability of mortgages.

ARTICLE 3

(1) The law should allow mortgaging of real estate or any "interest in real estate." See comments under Article 1 (1), above.

(2) What is the purpose of drawing distinctions between mortgages based on the differences in the use of the mortgaged property? If there is no legal purpose,

mortgage law should apply to all forms of real estate and interests in real estate without unnecessary distinctions.

Under US law a distinction is sometimes made between mortgages on a primary residence and all other real estate mortgages. Mortgages on primary residences may be subject to more procedural protections for the homeowner than would be the mortgage on a piece of commercial real estate.

ARTICLE 4

(2) It is anticipated that Russia eventually will have a system of juridical cadastre, in which all interests in real estate and real estate transactions will be registered. At this time, the real estate records of localities appear to be kept by a variety of different authorities. The law should anticipate that localities may establish or designate single real estate registration bureaus and that the legal departments of the executive committees of the local Soviets may not be the best place to establish those bureaus.

(3) This is a law of mortgages and generally should not address other issues of real estate registration. Registration of transfers of real estate should be covered in a law of registration of interests in real estate.

ARTICLE 5

The law does not mention that a mortgage deed must provide a description of the mortgaged real estate, as required under Articles 3 and 10 of the Law of Pledge. This law should improve upon the general requirement of the Law of Pledge by requiring that real estate mortgages include a description of the real estate that allows a holder to identify with absolute certainty the land and structures mortgaged, including by reference to recorded maps or by metes and bounds engineering surveys.

ARTICLE 8

Rather than wait for another law setting out the procedure for execution of mortgage termination documents, why not state in this law that documents terminating mortgages shall be signed by the mortgagee before a notary, provide a real estate description and a reference to the underlying mortgage by names of parties, date and number of mortgage certificate, and be recorded in the same place as the prior mortgage.

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ARTICLE 10

See General Comments above, number 2 (e).

The circumstances under which a court or arbitration tribunal may restructure the mortgage debt should be reserved only for mortgages covering a primary residence. The court's discretion should be limited to specific circumstances in which the mortgagor is experiencing financial difficulties due to unemployment beyond his control, personal illness or illness of other family members, or similar situations.

It is unclear what is meant by "stretching out" repayment of the debt for 3 years. Does this mean a complete suspension of payments for three years? An extension of the time for repayment by 3 years, with a corresponding reduction in periodic payments? The law should constrain the court's discretion by giving more detailed guidance. The court should be required to limit its modifications to the loan to the minimum necessary to solve the borrower's temporary financial problems. Each borrower should be entitled to only one court ordered loan restructuring over the term of the loan.

ARTICLE 12

(1) The amount of a loan on land is a matter between the borrower and lender, and should not be covered in the law. Occasionally, banking laws or regulations may limit banks to making loans on land only up to a specified percentage of value.

(2) The parties to a mortgage should be permitted to negotiate regarding the mortgagees rights to accelerate the loan in the event of a decline in value of the security. This provision of the law should be deleted or made subject to a contrary agreement between the parties.

ARTICLES 13, 14 AND 15

This law should look toward the future, when private transactions in land will be permitted. All this law should say is that land subject to mortgage may be foreclosed and sold in accordance with the provisions of this law and other applicable laws of the Russian Federation.

If at this time the only way to sell land is through a land bank, then the rules for purchase and sale of land by the land bank in foreclosure proceedings should be included in the law of land banks.

ARTICLE 16

It should be made clear that an enterprise can choose to mortgage just its real estate, or portions of its real estate, without having to mortgage the enterprise as a whole.

ARTICLE 18

A commercial bank should not make a construction loan unless it has a signed and registered real estate mortgage. It is not clear what this provision adds.

More importantly, however, the rights of general contractors to place a mortgage on real estate for unpaid construction charges is a major issue in construction mortgage lending. Refer to my general comment on future advances under 2 (a), above.

The law should make clear that any amounts disbursed under a properly registered construction loan mortgage has priority over any general contractors mortgage, regardless of whether or not the amounts are disbursed under the construction loan mortgage after the general contractor's claim arose.

All amounts disbursed under a construction loan mortgage should be treated as if they are disbursed as of the date that the mortgage is registered, and have the corresponding priority over subsequent secured creditors.

You might also consider adding to the law that the real estate owner and contractor may agree that the contractor waives any right to place a mortgage on the real estate.

ARTICLE 23

(1) Interests in residential real estate represented by shares in cooperatives or other forms of common ownership should also be subject to mortgage. The land connected with residential real estate should also be included in the mortgage of the residence.

ARTICLE 24

The legislation, including the Law on Pledge and this draft law, already allow mortgages to be made for acquisition or construction of housing. What does this provision add? Why is further legislation required?

ARTICLE 25

Mortgages on residential real estate should be registered in the same place as other real estate interests, including mortgages on other types of land and buildings, transfers of real estate, etc. There should be a central registry for all real estate interests.

ARTICLE 26

The valuation of mortgaged real estate of any kind is a market function that should be left to the parties to the mortgage. The parties should be permitted to choose the method of valuation, including by use of private sector appraisers and estimators. Banking regulations may set out required valuation procedures for regulated banks that make mortgage loans.

ARTICLE 27

Why doesn't this law set out the general procedures for foreclosure and sale of mortgaged real estate? Why are the procedures left to the State Commission for Privatization?

See General Comments on foreclosure set out under 2 (e), above.

PART 5

Is part 5 better left to a separate law on registration of interests in real estate? By putting land registration matters in this law on mortgages do you hinder the development of a comprehensive law to create a juridical cadastre for the entire Federation?

Perhaps it would be better to say in this law that mortgages will be registered in accordance with the laws on registration of real estate interests that may be enacted, but that during the period of transition such mortgages will be recorded in accordance with the provisions of this law. I may also be necessary to say that (1) mortgages registered pursuant to this law will be valid and retain their full effect and priority even after enactment of any subsequent law on juridical cadastre, and (2) all mortgages registered pursuant to this law in the transition period will be re-registered by the authorities in accordance with any subsequent law.