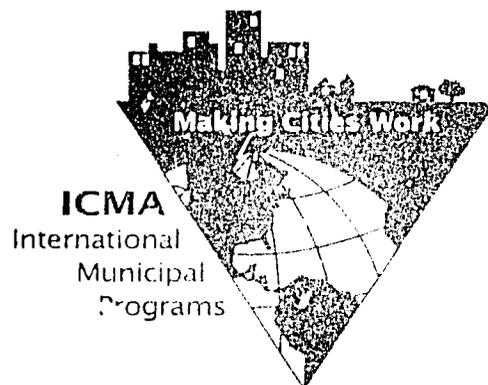


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Shelter Sector Reform Project Newly Independent States of the Former Soviet Union

An ICMA Report

Prepared for the Office of Housing and Urban Programs
Agency for International Development



PH-2006-927

**Report of the Short-Term Legal Advisor
to the Republic of Kazakhstan**

Kazakhstan

February 1993

**Prepared for the Office of Housing and Urban Programs
Agency for International Development**

By

John Sanger

**INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION
USAID Contract No. CCS-008-C-00-2056-00
Shelter Sector Reform Program
Task Order # 6**

Abstract

This report presents a preliminary assessment of the Kazakhstani laws and government institutions as they apply to the creation of private real estate markets. These include the legal foundations for land ownership and tenure, privatization of housing and other real property, real estate transactions, secured financing, titling and registration, taxation, and land planning and regulation. This report defines the roles of the Ministries, and the allocation of responsibility between local and national officials.

The author saw substantial progress in the area of privatization and further interest on the part of the government for more assistance is establishing the proper institutions for creating a market economy. The author presents a recommended agenda for technical assistance to legal reform in the housing sector. Included with this report are the materials the author used in presenting a seminar on US law on private property.

The substance of this report is based on a mission by John Sanger, ICMA's short-term legal advisor to Kazakhstan in January of 1993. There, Sanger met with numerous government agencies and collected a variety of legal material.

EXECUTIVE SUMMARY REPORT ON SHORT-TERM LEGAL ADVISOR MISSION
TO THE REPUBLIC OF KAZAKHSTAN FOR AID/ICMA

John M. Sanger, Pettit & Martin
Short-term Legal Advisor

The trip to Kazakhstan for the preliminary legal and institutional assessment (LIA) took place from January 4 through January 15, 1993, not including travel or report preparation or preparation for travel.

During the trip, the short-term legal advisor was able to meet with numerous governmental agencies, including the Ministries of Architecture and Construction (our client), the Ministry of Land Relations and Land Tenure, the Ministry of State Property (and privatization), as well as the Office of the Vice President of the Republic and others. Numerous legal materials were collected, but some laws are still awaiting translation by the local translator, particularly those laws pertaining to real estate transactions and local government structure.

Substantial progress has been made through the adoption of privatization laws and new laws on property and land, all of which are intended to further privatization and the creation of local housing and building markets. All drafts of the proposed new constitution and all existing laws also reassert the primary principle that all land will continue to be "owned" by the Republic of Kazakhstan. Therefore, although there are a number of forms of land tenure which provide the potential benefits of ownership in varying degrees, formal ownership will remain with the Republic. Government officials are aware of the concerns of the international community with regard to this situation and are also sufficiently sophisticated to appreciate that there are alternatives for inducing private investment without granting permanent land ownership.

Substantial progress has been made both in the adoption of one time privatization measures which provide for the transfer of state owned (and other collectively owned) property to private ownership. There has also been progress in the adoption of legislation necessary for the conduct of property transactions, such as rental and sale. There is also in process a program for registration of rights of use of land based on existing occupancies and uses. This represents essentially a complete cadastral reregistration of all land in any specified use by any individual, group or organization in the country. Procedures have also been established for purposes of recording changes in ownership of housing (and possibly other structures).

There is substantial interest both in our client ministry and other ministries for further assistance with respect to establishment of the legal and institutional structure for free markets in land, building and housing, within the constitutional constraints. Initiatives will probably be taken by the Ministry of Architecture and Construction, and possibly by the Ministry of Land Relations and Land Tenure or by the Office of the Vice President. At the present time, we have a sophisticated and able client who appears to have the willingness to push forward necessary legislation. At the same time, we can continue to explore the potential for other initiatives through the Office of the Vice President or other ministries. Coordination with IMF and World Bank recommendations would be important, and therefore we should obtain and review the most recent World Bank report to the Republic of Kazakhstan (apparently a November memorandum of understanding).

During the visit all reasonably obtainable legislative and legal materials were secured. A number remain to be translated. Undoubtedly, once these have been reviewed, further gaps will be noted and it will be necessary to seek further information. However, based upon the information collected to date, the following areas appear to be primary targets for follow-up assistance in terms of new legislation:

1. Forms of tenure offering long-term security (particularly leaseholds and clarification of existing hereditary life tenure).
2. Secured real property transactions in order to induce housing and other real estate financing.
3. Miscellaneous transactional areas, such as landlord/tenant, condominium owners' relationships and transactions in real property.
4. Procedures for land allocation/sale.

In addition, there are undoubtedly further needs with respect to future land use and environmental regulation, clarification of titles and clarity of local government authorizations.

The final report will include conclusions and recommendations on these subjects.

OVERVIEW REPORT ON U.S.A.I.D. SHORT-TERM LEGAL
ADVISOR'S MISSION TO KAZAKHSTAN, JANUARY 1993

John M. Sanger
Pettit & Martin
U.S.A.I.D./ICMA

I. Summary Description of Mission

The short-term legal advisor's mission lasted from January 4-15, 1993 in Kazakhstan. The assigned scope of work specified four tasks: (1) preparation of a preliminary legal and institutional assessment identifying, describing and evaluating the existing de jure and de facto legal framework and institutional apparatus affecting the potential existence, implementation and operation of real estate markets; (2) preparation of a preliminary and institutional reform strategy agenda involving recommendations for changes in the legal institutional framework in order to sustain privatized housing and real estate markets; (3) consultation with key individuals within the government involved in policy and legislative initiatives and housing and real estate in order to obtain their perspectives; and (4) consultation as possible and necessary with the City of Alma Ata and clarification of local authority in the housing and real estate area.

The Vice Chair (Deputy Minister) of the State Committee (Ministry) on Architecture and Construction, primary host for the mission, provided introductions to various key officials at other ministries for purposes of this effort. In addition, through a number of contacts, the legal advisor was able to obtain interviews and communicate with a variety of other officials. During the mission, at the request of the Vice Chair of the Committee on Architecture and Construction, the short term legal advisor gave comments on two draft laws, one intended to permit new single family home construction and the other intended to establish an overall framework for architectural regulation and city planning. In addition, the legal advisor suggested and the Vice Chair accepted the suggestion for the conduct of a lengthy lecture and seminar on American real estate law with the focus on aspects relevant to the privatization efforts in Kazakhstan. This presentation was made to approximately 40 members of the Ministry and a detailed written summary was distributed to all attendees, to members of the State Committee on Property and the State Committee on Land Relations and Land Tenure, as well as to the Institute on State and Law, the Academy of Sciences and other interested parties. The document was translated into Russian before distribution.

On exiting Kazakhstan, the advisor briefed the Chief of the A.I.D. mission, the Housing Specialist and the U.S. Ambassador on his visit. Frequent contact was made with Joseph Grassi, long-term resident advisor, and several meetings were held with Peter Epstein, Washington D.C. project coordinator for ICMA, who arrived during the second week of the legal advisors mission.

II. Written Work Product

The mission produced the following documents, each of which is attached to this memorandum. Only Item 2 is intended to go to the Republic of Kazakhstan. Item 3 has already been provided to the client. Items 1, 4 and 5 have already been provided to ICMA/USAID.

1. Executive Summary Report on Short-Term Leg Advisor's Mission to the Republic of Kazakhstan for AID/ICMA

2. Preliminary Assessment of Laws and Institutions for Real Estate Markets in Kazakhstan, with Appendix: Summary of Laws Collected and Translated Related to Privatization of Real Property.

3. Presentation on American Real Estate Law to the Ministry of Architecture and Construction and other interested parties, January 13, 1992 (English and Russian versions)

4. Briefing for the U.S.A.I.D. Mission and Embassy in Alma Ata as requested.

5. Comments on Parallels between the U.S. and Kazakhstan Experience requested by Ambassador William Courtney.

III. Meetings

The list of persons with whom the short-term legal advisor met and conducted interviews is attached as Exhibit A.

IV. Laws Collected

The list of laws collected is attached as Exhibit B.

V. Potential for Future Technical Assistance

The leadership of the Republic of Kazakhstan appears wholly committed to privatization and has made good strides toward that end. Substantial political sophistication and relatively good ethnic relations appear to be successful in fending off problems which have caused major conflicts in the other N.I.S. Adequate economic self-sufficiency appears to

provide reasonable stability. The client ministry appears sophisticated and motivated, without being excessively possessive regarding U.S. assistance. At the same time there are opportunities for expanding the client to include other relevant ministries interested in assistance and possibly including the Office of the Vice President as the ultimate coordinator of assistance.

In order to obtain the maximum benefits and legal assistance from expenditures, it is strongly recommended that an affiliation be established with competent local (Kazakh) lawyers who are respected by the government. They can provide the local expertise without which foreign advisors will have great difficulty in providing appropriate assistance and in drafting new legislation. Local advisors can simultaneously help fill in gaps in legal knowledge at very reasonable costs. A specific, new law firm of very well respected academics has been identified as a candidate to participate in this effort. In addition, the most productive output could be achieved through a combination of continued short-term trips by the short-term legal advisor combined with assignment of a long-term legal advisor for one or two years to undertake day-to-day working with the associated ministries and local lawyers on necessary legislative changes, legal drafting and institutional reorganizations. If there is inability to fund all of these efforts, then it should be possible to accomplish a substantial amount with a combination of long-distance advice and visits by the short-term legal advisor with assistance by local Kazakhstani lawyers.

Lastly, in order to insure continued client confidence and maximum effectiveness, an effort should be made to integrate legal reform efforts with economic strategies being promoted by the World Bank and the International Monetary Fund. For obvious reasons, the attention of higher placed government officials is focused on economic reform and immediate economic crises. In order to insure the success of the USAID effort, it is important that such officials view their participation as consistent with and in support of overall economic reform efforts being promoted by the United States and world organizations. The Office of the Vice President of Republic probably offers a very suitable place for achieving such coordination within the Republic. This author has insufficient knowledge to make recommendations regarding methods of coordination on the United States side. It does appear, however, that the United States Ambassador to Kazakhstan is interested, willing and able to help unified efforts on site. In short, the Republic of Kazakhstan appears very well prepared, able and interested in taking advantage of further U.S. technical assistance, both legal and technical. It will also continue to seek overseas investment in real estate privatization and development efforts.

Exhibit A

List of Persons with Whom Meetings Were Held By John M. Sanger
During His Visit to Alma Ata

Ambassador William Courtney, Ambassador from the United States to the Republic of Kazakhstan (phone number 632426, home 619493).

Craig Karp, Economic Officer, U.S. Embassy, Alma Ata, phone number 632942.

Saadat Dzhekisbaeva, Staff to Mr. Karp, tel. 631593 (lawyer with personal experience regarding apartment purchase in Alma Ata).

Larisa Golubeva, Staff to Mr. Karp, tel. 633534 (extremely good contacts in government of Republic of Kazakhstan).

Craig Buck, Chief of Mission, U.S.A.I.D., Alma Ata, Kazakhstan (fax number 696490).

Paula Feeney, General Development Officer, U.S.A.I.D. (Regional Mission for Central Asia), Alma Ata, Kazakhstan (responsible for oversight of housing programs) (phone number 639167, home number 619493, fax number 696490).

Zamira Kanapianova, Assistant to Ms. Feeney (telephone number 635466).

Gallena Kanapova, Secretary to Feeney and Kanapianova, telephone number 635466, home number 433150 (excellent typist available for night work).

Grigori Marchenko, Advisor (foreign economic relations) to the Vice President of the Republic, telephone

number 621066, fax 623103, House of Government (Dom Parlamenta) 48091 Alma Ata (fluent English speaker, very highly placed in the office of the Vice President, very familiar with privatization and fully committed, interested in the development of housing and real estate finance legislation, pressing for independent commission to be established for law reform).

Cyrik Ahkmenbetov, Chair, State Committee on Land Relations and Land Tenure (telephone number 53-93-25, address 32, Chapaev Street) (very straightforward; running committee that is in charge of complete reregistration and confirmation of land tenure held throughout the country; very knowledgeable regarding land situation; very interested in the U.S. experience).

Petr Svoyak, telephone 627705, located in House of Government, Chair, Parliamentary Committee on Anti-Monopoly, Member of the Cabinet of Ministers, Deputy of the Supreme Soviet from Uraz, and apparently Chair, State Committee on Anti-trust (Anti-Monopoly), telephone 627705 (economist, apparently very knowledgeable on the economic direction of the country and in favor of economic reform; emphasis on macro economic change; influential and politically realistic; said to be an English speaker but did not evidence it in my presence; friend of Saadat Dzhekisbaeva).

Bair M. Dosmagambetov, Vice Chair, State Committee on Architecture and Construction, telephone number 62-91-01, address Ablaihan 93/95, 480091 (Dom Ministers).

Arik I. Ozaling, Vice Chair, State Committee on Architecture and Construction, telephone number 62-90-79, address Ablaihan 93/95.

Mr. Bekmohambetov, Housing Specialist, Committee on Architecture and Construction.

Mr. Ahmanbayev, Economic Relations Specialist, State Committee on Architecture and Construction.

July H. Abaissov, Architect, State Committee on Architecture and Construction, telephone number 62-96-17.

Alexey Abilov, Professor of Architecture, Kazakh State Academy of Architecture and Construction, 28 Obruchev St., 480123, telephone 201518, home 201741 (representative of architects' union).

Cyrik Sultangalief, Chief, Department of Housing Distribution, City of Alma Ata, telephone 473792 (apparently in charge of all specific issues having to do with housing distribution and allocation; very populist in opinions on land and housing privatization; works for Jasinbayev.

Erkesh K. Nurpeisov, Director, Institute of State and Law, 429215, 425395, 429025 (director of kind of research institute of law, specialist in law of governmental structure) very interested in being involved in new legislation and having relationship with Americans; one of founders of private law firm to serve foreigners called Zanger Law Institute; protege of Maidan K. Suleimenov.

Maidan K. Suleimenov, Chief Scientific Secretary, Academy of Sciences, 626617, home number 616204 (very involved in development of legal practice for foreign governments and in advising on civil legislation; specialist in civil code and civil law; recognized and well-regarded expert).

Yurlan Zhuputov, Director, Zanger Legal Center, at Institute on State and Law, associate of Drs. Nurpeisov and Suleimenov (responsible for development of private law practice).

Michael I. Timkin, Vice Chair, State Committee on Property (privatization), telephone 620197 (a lawyer and economist, a former classmate of Nurpeisov, very much involved in privatization, especially in the drafting of the original legislation when in the High Economic Council and now its implementation, very committed, very knowledgeable; explored potential as client, but seems reluctant to invade someone else's territory).

Nurlan Dzhanibelov, head of the Azian Turis Collegia, apparently a form of law firm or union or law collective equivalent to being in private practice but also part of the Ministry of Justice (apparently knowledgeable regarding practical aspects of law practice and laws that exist regarding real property; assisted in collection of transactional laws), 62-62-27, fax 62-59-54, 29-92-73, 67, Aitekeli, Alma Ata.

Mr. Baijonov, Head, Cit Justice Department (appears to be interested in making his office a private law firm to earn revenues for his law department).

A. Sasanvayev, Deputy Head of City Justice Department, Alma Ata (apparently in charge of legal services for the City itself and for citizens needing legal services from the City, under Baijonov).

Karen Widess, ABA CEELI Project, tel. 622757, representing the ABA at Alma Ata; familiar with many people involved in legal reforms; introduced me to Nurpeisov and Dzhanibelov).

Erik Rudenshiold, representative, International Republican Institute, 506233 (involved in helping political parties to develop their constituencies in Kazakhstan and to develop grass roots democracy).

Susan Johnson, International Executive Service Corporation, Alma Ata, 506246, 601377, 601181, office in Academy of Sciences (involved in bringing retired businessmen to assist in Kazakhstan; married to Pakistani Ambassador to Kazakhstan).

Lowell Ewert, Mercy Corporation International, 647736 (providing volunteer services).

Erlik Aliev, International Banking Specialist, Komarzkabank, 541242, 614067, 618495 (young economist in new job, formerly with Institute of Economics, has many contacts; friend of Bayzakov, assistant to the Speaker of the Supreme Soviet and Zimanov, apparently an important member of the Supreme Soviet; offered introductions but too late to take).

People who assisted or with whom contact was made

Natasha Ivanova, 601726 (husband Anton, son Dimitri, known as Dima, friend, assistant to Joe Grassi, served as my assistant, very helpful, very nice, knows a lot of people).

Aset Shyngysov, 293708, 335373 (excellent interpreter, probably will be working with U.S. Embassy).

Sayida Kerieeva, Statistica Representative, 635509 (home 445702).

Nicholas Guryev, owner of Quest, translator, 336036, fax 336024, home 485848, address 91 Golgo Street, Entrance 1 (translations).

Slava, driver, office 637879; home 246620 (very nice and reliable, hired with car through Statistica, agency charges \$18,000 per day).

Nicolai Mekhedko, office 635214, home 328181 (works for Embassy; just bought his apartment; can provide information regarding privatization process but did not have chance to speak to him).

Talapker T. Imanbayev, Deputy Chief, State Committee on Communication (external ties department) telephone 620678, fax 637210, 134 Bogenbai Batyr Street, 480091 Alma Ata (introduced briefly by Marchenko).

Exhibit B

List of Laws and Related Documents of the Republic of Kazakhstan
Identified and Collected by John M. Sanger

1. Land Code, November 16, 1990
2. Law on Property (Ownership), December 15, 1990
3. Law on Denationalization and Privatization, June 22, 1991
4. Presidential Decree Concerning the First Stage Program for Denationalization and Privatization of State Property and Regulations Concerning Coupons for Privatization, September 13, 1991
5. Supplement No. 3, Regulations Concerning Valuation and Costs of Property of State Enterprises Subject to Privatization, June 25, 1992 approval by State Property Committee; approved by Ministry of Finance not indicated)
6. Draft law on Individual House Building, 1992, prepared in accordance with Vice Prime Minister's Decree dated April 13, 1992, No. 4-1P
7. Land Reform Code, June 28, 1991 (translated by Quest)
8. Housing Code, July 1, 1992 (translated by Quest)
9. Resolution of Cabinet of Ministers on Regulations Concerning Privatization of State Housing Stock, July 20, 1992, No. 610
10. Resolution by Cabinet of Ministers Concerning Additional Privileges to Certain Categories of citizens in Housing Privatization, April 23, 1992, No. 374

11. The Law on Education (excerpt) January 18, 1992 (on rights of pedagogic workers to privileges in housing)
12. Law Concerning Health Protection, January 10, 1992 (excerpt), privileges granted to workers in healthcare for housing
13. Presidential Decree concerning additional privileges to the disabled war veterans, international servicemen and families of dead servicemen, undated excerpt regarding special privileges in housing (translated by Quest)
14. Law Concerning Social Protection of the Disabled, June 21, 1991 (excerpt) granting privileges to the disabled and matters related to housing
15. Mayoral Decree in Alma Ata concerning measures for acceleration of housing privatization, September 15, 1992
16. Standard Agreement for Privatization of a Dwelling
17. Land Tax Law, December 17, 1991
18. Amendment to Land Tax and Road Fund Law, June 30, 1992
19. Mayoral Decree, Alma Ata, November 18, 1992, on establishment of self-financed entity for legal services "Almaty-Zam"
20. Law on Local Self-Government, (under translation by Quest)
21. Civil Code excerpts regarding property, pledges, transactions in real property and similar matters (under translation by Quest)

22. Cabinet of Ministers resolution adopting regulations regarding organization of auctions for state property, (under translation by Quest)

23. Cabinet of Ministers regulations regarding formation of property of the Republican Communal Property, (under translation by Quest)

24. Cabinet of Ministers regulations concerning registration of ownership and housing sought to be privatized, (under translation by Quest)

25. Excerpts from November 1992 draft Constitution (under translation by Quest)

26. June 1992 Draft Constitution

SUMMARY REPORT TO THE REPUBLIC OF KAZAKHSTAN
ON PRELIMINARY ASSESSMENT OF LAWS AND INSTITUTIONS
FOR PRIVATE REAL ESTATE MARKETS AND
RECOMMENDED REFORM STRATEGY AGENDA

John M. Sanger, Esq.
Pettit & Martin
USAID/ICMA Short Term Legal Advisor

March, 1993

I. Introduction

This report contains a summary of the results of a preliminary legal and institutional assessment of existing laws and institutional structures influencing the development of private market real estate markets in the Republic of Kazakhstan. The full report, of which this is a summary, is based on a two-week visit to the Republic by the short-term legal advisor from January 4 to January 15, 1993. Many interviews were conducted during that period; numerous laws were collected, translated and evaluated (see the list attached as Exhibit A). The longer report is intended primarily for use by other lawyers and foreign advisors. It describes progress already made in privatization and provides a context for future assistance. A large part of the longer report summarizes existing laws in English. The complete report has not been translated into Russian but is available in English.

Naturally, given the shortness of the visit and the limited time available for evaluation, the preliminary assessment is partial and incomplete. Some areas could not be reviewed in much detail, and some areas could not be reviewed at all due to the unavailability of relevant laws or the inability to have them translated within the relevant time period. For instance, there has been no evaluation of existing banking and commercial financing practices as they might relate to housing finance, nor has there been any evaluation of existing environmental protection laws.

However, a substantial amount of progress was made in evaluating the existing situation and establishing an agenda for future work, in large measure due to the assistance provided by government officials and Kazakhstani lawyers. The recommended agenda for future efforts is contained in this summary report.

II. Future Efforts

USAID/ICMA intends to send the short-term legal advisor back to Alma Ata later this spring for the purpose of moving forward. The next visit should include review of the

agenda for future reform efforts, discussion of the involvement of other ministries, agreement on priorities and commencement of further work. The primary emphasis of the next stage would not be on information gathering, but rather on direct assistance to the Republic in conceptualizing and drafting new laws and organizing to implement those laws to provide for real estate privatization.

III. Overall Framework for Reform Agenda

The recommendations for a prioritized reform strategy agenda presented in the next part of this summary report are based upon an overall framework of laws and institutions perceived to be necessary, in some form, to support private market activities in housing and other forms of real estate. That framework is outlined in this section.

A. Laws About Privatization

One type of legislation that is required consists of those laws which provide for the one-time shift from existing governmentally controlled markets, producers and property to private control. Such laws generally involve transfer of property into private hands. Kazakhstan has already enacted a number of such laws. Such laws are the first step toward a private market economy. In some areas there is a high priority for completion of privatization. These include potential legislative changes to complete housing privatization of nonresidential real estate, and rational land allocation procedures for new development.

B. Laws About Private Property

Equally important are laws establishing fundamental rights to the ownership and use of real property. Such laws provide the foundation to support long-term investment in new development. Much has been accomplished, but important work remains to provide the kind of assurances which Kazakhstanis and foreign investors require in order to make long term investments in real estate. Examples are clarification of available forms of long-term land tenure, integration of land and building titling registration systems, regulation of landlord/tenant relationships and governance by co-owners of condominiums and other subdivisions. All efforts will be consistent with the constitutional principle regarding land ownership.

C. Laws About Private Financing for Housing and Other Real Estate Development

Laws to attract financing for housing construction and land development are also a high priority. Like all capital

goods, housing and other real estate development require long-term financing. It will take many years to develop the entire financial structure to support private real estate markets. An important beginning can be made with legislation to ensure creditors' rights in an overall secured financing system. Therefore, high priority is given to legislation in that area. Substantially more effort will then be required to attempt to develop the types of banking and national credit systems to support a nationwide system of housing finance; such an effort must be undertaken as a part of the overall reform of the banking system. The Law on Pledge has only just been received in translation and will be reviewed before the next visit.

D. Laws About Governmental Organization

During the time of the short-term legal advisor's visit, there was considerable uncertainty regarding the proposed governmental structure of the Republic. Now that a new constitution has been adopted, attention can be given to the degree to which authority should be decentralized from the Republic to local governments. Some decisions will have to be made regarding delegation of governmental responsibilities. The Law on Local Self-Government has just been translated and will be reviewed so that a discussion can occur during the next visit.

E. Laws About Land Use Regulation and Environmental Protection

As privatization occurs, it is necessary to adopt governmental regulations providing for appropriate control of land development and building. Planning or zoning laws, environmental standards and building codes will all be needed. Although extremely important, these have been given a somewhat lower priority in terms of foreign advisor assistance due to the existing degree of control by governmental authorities over the housing and land supply and past experience in this area. However, it is clear that some effort will have to be devoted to the adoption of building codes and environmental regulations to avoid serious problems in the future. Special attention is needed to land subdivision, grading and installation of infrastructure for individual development.

F. Laws About Public Finance and Taxes

Some governmental support of private development will always be required. In addition, property can be a source of revenue for government through property taxes, land rent and fees. At the present time, this topic has been given a lower priority than other efforts due to the greater need to encourage private financing. In addition, it is not likely that

substantial revenues can be anticipated in the early years from private property.

G. Laws About Public Subsidies

In most capitalist countries, numerous laws provide subsidies for privately supported and publicly provided housing to satisfy the needs of those who could otherwise not house themselves in the private market. Although some immediate attention is needed to housing allowances and similar direct subsidies for those who cannot afford the cost of private housing, this has not been the focus of the legal advisor given the ability of other advisors to provide assistance.

H. Other Relevant Laws

There are a number of other types of laws which will undoubtedly be required at some time, including those regulating certain types of real estate professionals, including appraisers, brokers, contractors and architects and engineers. These laws are primarily provided as a form of consumer protection and will be needed. However, given the low level of private activity at the present time, such laws have not been assigned a high priority.

IV. Proposed Reform Strategy Agenda

Kazakhstan has made substantial progress in privatizing its economy and is clearly committed to continue these efforts. The reform strategy supported by USAID is intended to build on these efforts. It also accepts fundamental, cultural and legal principles affecting the acceptability of alternatives to the Republic. For example, the commitment to national ownership of all land is assumed to continue; it is accepted as a premise for the development of other strategies. Similarly, the preference for single-family home ownership should be seen as an opportunity for the development of private real estate activity.

In terms of the legal foundations for a privatized real estate economy, the following areas need to be addressed in roughly the following order of priority: (1) clarification of the availability and rights associated with different forms of land tenure; (2) development of laws supporting secured real estate transactions; (3) developing an equitable and economically desirable means of allocating land for new development; (4) devising a means to bring closure to the housing privatization process; (5) clarifying condominium and subdivision rules; (6) privatizing non-residential real estate; (7) unifying recordation of title to land and improvements; (8) clarifying landlord/tenant relations; (9) clarifying laws

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for real estate transactions; and (10) affording more flexibility in land use regulation.

A. Land Tenure

One of the highest priorities is clarification of land tenure alternatives available for long-term investment in real estate in Kazakhstan. Security of land tenure and essential attributes of ownership are essential to promote investment, both by Kazakhstani citizens and by foreigners.

Several alternatives are available and appear to be permitted by existing law. All that is lacking is a greater degree of certainty regarding the rights and attributes associated with particular forms of tenure. Hereditary life tenure, permanent use and long-term leaseholds appear to be the best alternatives available for purposes of inducing long-term investment in real property. Each of these should be clearly defined in the law in order to provide certainty regarding the rights of someone who has land under one of these forms of tenure. In addition, if permanent use is to be a form of tenure attractive for purposes of long-term investment in land development, then duration and rights of governmental intervention need clarification. There is concern from a legal standpoint that a leasehold in excess of the number of years defining temporary use may not be available. In the case of hereditary life tenure, there needs to be a definition in the law that is understandable and which qualifies the right of transferability and exclusive possession, as well as the notion of indefinite duration.

If there is to be a truly, freely functioning real estate market, the present linkage between tenure and land use needs reassessment. Serious thought should be given to separation of the regulation of use of land from the tenure granted. For example, if someone obtains a lot for purposes of a single family dwelling, in twenty years the appropriate use may change. The process for changing the use should not affect continued tenure, at least if one is to follow free market traditions.

B. Secured Financing.

A reasonable assumption is that privatization of the production side of the housing industry will not occur unless and until there is effective consumer demand. The government is reasonably concerned regarding the need for continued housing production to meet the needs of a growing population and to satisfy enough housing needs. In a privatized economy, however, the government should only be producing housing or providing the subsidies for private production of housing for those at the

very bottom of the income ladder. Although only a small percentage of the population is capable of affording newly constructed housing, there is evidence of some demand for new individual house construction in the country. The government is quite reasonably interested in responding to that demand as quickly as possible.

Based on the experience of western countries, the availability of mortgage financing is a key to expanded, effective consumer demand for new housing, as for all capital goods. Although the creation of a mortgage banking system, with governmental support, is far beyond the scope of this assessment, one critical component will be a legal structure supporting secured transactions. A secured transaction is defined to involve a loan, the security for which is exclusively, or almost exclusively, real property. The security instrument may be called a mortgage, deed of trust, indenture or something else. To be effective as a security instrument, there must be the right under the law for the holder of the instrument to be able to take the property in satisfaction of an unpaid debt or to take the property upon the happening of some other default pursuant to the contract for the loan (such as failure to pay taxes which would cause a loss of the property to the government).

To the best of the author's knowledge, the legal foundation for secured financing does not exist and needs to be created. While not a difficult task, it involves a number of important policy issues, among them the right of the foreclosing lender to obtain the tenure in the land held by the borrower before default, the right of eviction of the defaulting borrower from the property, rights of recovery of any unsatisfied debt other than through recovery of the real property itself (i.e. deficit judgment), and responsibility for carrying out the foreclosure process and for handling any disputes. In most American states there are also substantial protections afforded to consumers who obtain financing, especially for home purchases, to avoid predatory practices. Even in the absence of a fully functioning mortgage banking system, the creation of a suitable legal underpinning for secured financing may generate private sources of financing out of private savings, as occurs. It also affords a means for the sale of property by owners on an installment payment basis.

In drafting the laws for secured transactions, consideration should be given to permitting the full range of potential loans for houses and other purposes, including shared appreciation loans, inflation index loans and so forth.

C. Land Allocations/Sale Procedure

Certainly one of the most pressing concerns with respect to any new development is to devise a workable and equitable means of allocating, assigning or selling land use rights for purposes of new development of housing and other real estate. The draft Individual House Building Law appears to contemplate the allocation by local governments of individual plots of land for the construction of new single family housing. As currently understood, the lots would be given to those who agree to build houses, each of whom would have a certain period of time to build a house in order to perfect his rights to the plot. Thus, land would be given without charge for the purpose of inducing new house construction by those who could afford it. Each homebuilder would be expected to bear the full cost of new infrastructure required for the housing development, at least onsite utilities. These matters do not appear to have been completely resolved, but the principle of land grants for housing construction does appear to be clear. Some thought needs to be given as to whether or not, as a matter of equity, it is desirable to make available the land for free. It may be particularly hard to stop that pattern, once initiated, even if undesirable later.

Of far greater importance is the question of how to establish a suitable market in land so that land is allocated efficiently by market pricing mechanisms for the most suitable uses. For this to be accomplished, it will also be necessary to free land assignments from use restrictions, except to the extent use restrictions are embodied in generalized land use planning.

Obviously, one potential approach is the auction method, already in use for purposes of privatizing certain enterprises. Another alternative is to solicit bids for parcels of land for development for particular purposes and make awards to the highest bidder who makes proposals responsive to the government's desires, somewhat like redevelopment agencies do in the United States with parcels for redevelopment. In either case, it will be necessary to consider alternatives which make available relatively large parcels of land for development for multiple purposes or for potential multiple ownership, through subdivision and resale, particularly in the case of single family house development.

D. Completion of Housing Privatization and Completion of Private Rental Market

Numerous persons mentioned the fact that there was no substantial incentive for existing tenants of government-owned housing to privatize. This would also appear to be the case

from a simple reading of the applicable laws. Moreover, recently unveiled proposals by the City of Alma Ata to charge for services and management of housing do not indicate that the charges would be any less for those who own the housing than for those who continue to rent. Until a substantial difference starts to develop, it can be anticipated that residents would choose not to privatize until they have some reason to do so. On the other hand, it is extremely desirable, both to generate the demand for private housing services and to create a private rental market, for privatization to be accomplished in a reasonably short time.

As has been observed for other countries, one of the potential problems with complete privatization of the housing supply is the short-term absence of rental housing. It will obviously take some time for individually owned units, especially in large apartment buildings, to be exchanged so as to create a managed rental housing supply. In fact, that situation may not occur for decades if housing privatization continues in the current manner. Therefore, consideration needs to be given to the means of bringing closure to the housing privatization process, either by completing privatization to existing occupants or by providing a means whereby housing may be privatized as an investment with subsequent rental to occupants.

One alternative would be to set a deadline for privatization by existing occupants, allowing purchase of existing units from the state by others for purposes of subsequent rental, if the existing occupants do not choose to privatize their units. Another alternative would be to allow existing occupants to sell or transfer their right of privatization to another party so that someone else may choose to privatize the unit and take whatever risks are associated with subsequent cost increases. Similarly, consideration should be given to converting state housing to fixed term renewable rentals after some established deadline for privatization so that occupants can consciously decide whether they wish to continue to rent or to own. Not all occupants may choose to own. In the end, it would probably be preferable to have single buildings be entirely owner occupied or renter occupied. It will be very difficult to manage rental housing as an investment, where it consists only of homes or of isolated units within apartment buildings.

E. Subdivision and Condominium Regulations

Although some of the existing laws clearly recognize the right of owners of individual apartments and joint owners of other property to manage their property as they choose, there are some gaps in legislation on condominium methods of ownership

of multi-family housing and a complete absence of legislation regarding the subdivision, development and sale of lots. In the case of both condominium ownership and single family home subdivisions where utilities and streets may be in private ownership, the needs are roughly the same: a reasonable framework to permit joint management, financial responsibility and dispute resolution, along with clear individual responsibility for individual property. The laws need not be especially complex, but need to elaborate somewhat on the bare bones provisions currently existing regarding joint ownership. In addition, there need to be clear means by which condominium associations may enforce requirements for contribution to and reimbursement of expenses, probably through liens of the same nature that need to be established for purposes of supporting secured transactions. Because these tasks could be accomplished fairly easily, they would warrant a higher priority if housing privatization accelerates.

With respect to the subdivision of land for development (or, more appropriately put, the subdivision of land leaseholds or other forms of semi-permanent tenure for development), legislation needs to be enacted to regularize responsibility for infrastructure, permissibility for subdivision and infrastructure development by developers for purposes of sale of unbuilt lots to others, and adequate consumer protection related to the foregoing, including adequate assurance of completion of infrastructure

F. Privatization of Non-Residential Real Estate

Under current law there does not appear to be a procedure or the legal foundation for the privatization of non-residential real estate separate from the privatization of enterprises which occupy the real estate. The general presumption has been that either there is no market for non-residential real estate in the absence of the occupying entities or that it is impossible to privatize the enterprises without assurance of the premises which they occupy. It is not clear that either of these two presuppositions is accurate. In any event, a future response to potential demand for non-residential real estate is required. The demand may be to accommodate new enterprises or to accommodate existing enterprises which have new needs and desires.

Efforts should be considered to separate the privatization of non-residential real estate from the privatization of enterprises. Different skills, investment objective and sources of funding are likely to be involved. An issue that needs to be addressed as soon as possible is the form of tenure to be granted in the privatization of enterprises which occupy non-residential real estate. If security of tenure

is necessary to privatize the enterprises, it would be desirable to establish such tenure based on leaseholds of a given term so that they may be evaluated economically, both in terms of those acquiring the enterprise and in terms of those potentially acquiring the real estate if real estate is to be disaggregated as a separate commodity for auction or transfer.

Over time it is reasonable to expect changes to occur in the utilization of non-residential real estate, especially commercial real estate in the larger cities. There is the possibility of substantial pent up demand for expansion, more efficient reconfiguration or changes in location for consumer-responsive enterprises, especially in retail trade and consumer services area. In addition, there may be a growth in demand for office space. Although increases in demand may simply substitute for government occupancies in the short run, either substitution or demand for new space offers the opportunity for privatization and investment in commercial real estate. Obviously security of long-term land tenure will be critical for purposes of inducing investment in real estate. Commercial real estate does, however, offer potential new sources of tax revenue and lease rental revenue for the government.

G. Unification of Title Records.

If, as appears to be the case, ownership records are maintained separately for land and improvements, it would be extremely desirable to move toward unification of title records. In addition, it is necessary to provide for recordation of leaseholds.

If the foundations of secured financing are provided, it will be essential to provide a mechanism whereby financial encumbrances can be recorded as a part of the title system in order to provide adequate notice to potential purchasers and in order to secure the liens of lenders. Similarly, it will be necessary to provide in the title registry system for a mechanism for recording contracts, covenants or other aspects of common ownership developments, including condominiums and subdivisions. Over time, it is presumed that other features of real property interests, such as easements, covenants and licenses may need to be accommodated.

H. Landlord-Tenant Law.

Since the author was unable to obtain existing laws applicable to landlord-tenant relations other than recent enactments, little is known about legal presumptions, protections or provisions for landlord-tenant relations with respect to housing or non-residential real estate. Apparently

there is some applicable law but its scope is uncertain. Clarification of the rights and responsibilities of landlords and tenants is critical to smoothly functioning rental markets and the avoidance of what could be politically dangerous predatory practices by landlords after privatization. On the other hand, given the lack of familiarity with the business of being a landlord, it is important to provide guidance through legislation regarding suitable landlord-tenant relations.

Recently enacted laws suggest, but do not make clear, rights of landlords with respect to rent expectations, eviction for nonpayment or damage to property and similar critical issues. On the other hand, legal guidance will be required with respect to expectations regarding unit habitability, landlord provision of services for units and similar issues of concern to tenants. Apparently the general legal presumption under applicable existing law is that the landlord is responsible for all services in the absence of an agreement to the contrary. On the other hand, governmental policy for state housing as stated in the Housing Code rental agreements in use in the few transactions which appear to occur (primarily with foreigners as renters) dictate exclusive tenant responsibility with respect to all unit services, costs and repairs. These issues need to be clarified.

I. Real Estate Transactions

In order to provide for smoothly functioning real estate markets, there must be agreed rules or presumptions, in the absence of contractual coverage, with respect to real estate transactions of an ordinary nature. For instance, it is important to define when title passes in the event of an installment payment arrangement. Apparently in some cases under existing law title does not pass until payment is completed. This has substantial disadvantages for potential owners and lenders. No information has been obtained on issues such as who bears the risks of loss during the contract period. In fact it is not clear that there is such thing as an enforceable contract. Generally in the draft Law on Individual Housing Construction, the suggestion is made that rights to use of the land are not perfected until construction is completed. This could be problematic, as previously stated, for potential lenders. In order to determine what is really required, a more thorough investigation of existing applicable law is required.

K. Land Use Regulations

At the present time land use regulation may be said to be absolute. In theory the government, both through ownership and through planning regulation, controls all land use. Movement toward private real estate implies a significant

loosening of government controls over land use. This would appear to be most effectively accomplished through a generalization of existing plans. Such plans could become a form of binding regulation governing private and public decisions. To this observer, there seems little reason to aim at the establishment of a two-tier planning/zoning scheme such as that common in the United States. Given the detailed form of planning that has gone on in the past, it would seem more practicable to utilize the planning system as the basis for a land use regulatory system in the future. However, new laws will be required to provide the precise procedures for application and approval of entitlements to development and use. Since such changes can have no meaning until decisions are made regarding the method of allocation and distribution of land for use and development, this task is given a lower priority.

V. Next Steps

Hopefully, this summary report will provide the basis for agreement on prioritizing further work for the Republic. While there may not be agreement with all the recommendations in this summary report, it should suggest areas needing discussion.

The legislative agenda and its ultimate implementation will involve a number of governmental agencies. Therefore, it could be useful to establish an interagency working group prior to the next visit with whom the short-term legal advisor could discuss and agree on priorities. Candidate agencies would include the Committee on Architecture and Construction, the Committee on State Property, the Committee on Land Tenure and Relations, the Committee on Economics, the Committee on Finance and, possibly, some city representatives or parliamentary representatives who might represent cities. Whether such a working group can be established prior to the return of the short-term legal advisor needs to be determined by the Chief Architect.

Once agreement is reached on the prioritized agenda, work can actually start on priority tasks, including working out concepts for legislation, suggesting alternatives for legislative solutions and drafting of legislation.

Because a substantial amount of time will be required to design and draft appropriate laws and structures for governmental actions, it is possible that one or more working or drafting committees might be created with whom the USAID/ICMA long-term and short-term advisors could work on a regular basis. In addition, it is desirable to coordinate with other efforts assisted by the World Bank and the International Monetary Fund.

For maximum efficiency a legal advisor may reside in Alma Ata for several months or longer to work with such committees. In addition, Kazakhstani lawyers would be engaged by USAID/ICMA to work with the foreign legal advisor on the proposed legislation. This approach is expected to be more efficient and reduce misunderstanding.

Exhibit A

List of Laws and Related Documents of the Republic of Kazakhstan
Identified and Collected by John M. Sanger

1. Land Code, November 16, 1990
2. Law on Property (Ownership), December 15, 1990
3. Law on Denationalization and Privatization, June 22,
1991
4. Presidential Decree Concerning the First Stage Program
for Denationalization and Privatization of State Property and
Regulations Concerning Coupons for Privatization, September 13,
1991
5. Supplement No. 3, Regulations Concerning Valuation and
Costs of Property of State Enterprises Subject to Privatization,
June 25, 1992 approval by State Property Committee; approved by
Ministry of Finance not indicated)
6. Draft law on Individual House Building, 1992, prepared
in accordance with Vice Prime Minister's Decree dated April 13,
1992, No. 4-1P
7. Land Reform Code, June 28, 1991 (translated by Quest)
8. Housing Code, July 1, 1992 (translated by Quest)
9. Resolution of Cabinet of Ministers on Regulations
Concerning Privatization of State Housing Stock, July 20, 1992,
No. 610
10. Resolution by Cabinet of Ministers Concerning
Additional Privileges to Certain Categories of citizens in
Housing Privatization, April 23, 1992, No. 374

11. The Law on Education (excerpt) January 18, 1992 (on rights of pedagogic workers to privileges in housing)

12. Law Concerning Health Protection, January 10, 1992 (excerpt), privileges granted to workers in healthcare for housing

13. Presidential Decree concerning additional privileges to the disabled war veterans, international servicemen and families of dead servicemen, undated excerpt regarding special privileges in housing (translated by Quest)

14. Law Concerning Social Protection of the Disabled, June 21, 1991 (excerpt) granting privileges to the disabled and matters related to housing

15. Mayoral Decree in Alma Ata concerning measures for acceleration of housing privatization, September 15, 1992

16. Standard Agreement for Privatization of a Dwelling

17. Land Tax Law, December 17, 1991

18. Amendment to Land Tax and Road Fund Law, June 30, 1992

19. Mayoral Decree, Alma Ata, November 18, 1992, on establishment of self-financed entity for legal services "Almaty-Zam"

20. Law on Local Self-Government, (under translation by Quest)

21. Civil Code excerpts regarding property, pledges, transactions in real property and similar matters (under translation by Quest)

22. Cabinet of Ministers resolution adopting regulations regarding organization of auctions for state property, (under translation by Quest)

23. Cabinet of Ministers regulations regarding formation of property of the Republican Communal Property, (under translation by Quest)

24. Cabinet of Ministers regulations concerning registration of ownership and housing sought to be privatized, (under translation by Quest)

25. Excerpts from November 1992 draft Constitution (under translation by Quest)

26. June 1992 Draft Constitution

PRELIMINARY ASSESSMENT OF LAWS AND INSTITUTIONS
FOR PRIVATE REAL ESTATE MARKETS IN KAZAKHSTAN
AND RECOMMENDED REFORM STRATEGY AGENDA

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I. Introduction

This report contains the results of a preliminary legal and institutional assessment of existing laws and institutions influencing the development of private real estate markets in the Republic of Kazakhstan. The report is based on the interviews undertaken by the short-term legal advisor during a two-week visit to the Republic, the collection of those laws which it was possible to obtain and have translated during that visit or soon thereafter, and subsequent evaluation. Naturally, this assessment is preliminary and partial. A comprehensive legal and institutional assessment, even if possible, would require more in-depth evaluation and would probably be most productively accomplished through the combined efforts of an American lawyer working in conjunction with a skilled and experienced Kazakhstani lawyer. The intent of this preliminary assessment is to provide the basis for preparation and potential approval of a plan for the adoption and implementation of additional laws and corresponding institutional changes to enhance private real estate markets in Kazakhstan. Some preliminary recommendations toward that end are contained in this report.

A fairly complete synopsis of the major laws collected, translated and analyzed and which partially form the basis for this assessment are contained in the Appendix.

II. Accomplishments to Date

The Republic of Kazakhstan has made great strides toward privatization of the economy, especially privatization of housing, over the last two years. Apparently the first or one of the first of the Newly Independent States (N.I.S.) to commence privatization efforts, plans for housing privatization were formulated and implementation began as early as spring of 1991. Housing and small business enterprises have been the target of the first stage of privatization efforts.

Housing privatization efforts began utilizing the coupon system. Under the coupon system, every citizen of Kazakhstan who occupied existing housing was distributed coupons

based upon his or her length of employment. In other words, a set of calculations similar to those that would be used for a pension system were the basis for the distribution of coupons. Housing was then to be valued and each occupant was to be eligible to purchase the housing occupied with the coupons plus any cash required to make up the difference between value of the unit and the value of the coupons. Any surplus coupons are available to be used for the purchase of interests in joint stock companies to be formed for privatization of large enterprises. Apparently the initial housing law, the predecessor of the Housing Law of 1992, was passed to implement this system, which was implemented through a series of decrees by the Cabinet of Ministers and the President. Successive decrees indicate that numerous exceptions had to be made: first, special privileges were accorded to war veterans, then educators, then health workers, and so on. Each was apparently intended to achieve greater equity in the availability of housing and to respond to political pressures. The coupon system itself was originally intended to equalize conditions among citizens occupying housing of varying size and quality. Unfortunately, this has turned out to be very difficult and cumbersome to achieve. Persons with no rights of occupancy (i.e., those occupying hostels or sharing quarters with older relatives or living with their parents) have no rights to coupons. The young, with short work lives, have almost no opportunity to buy housing at all. On the other hand, the elderly who have worked most of their lives, are protected and this may be seen as a good aspect of the coupon system and a source of political stability. The elderly are generally disadvantaged by the high inflation associated with privatization efforts at the current time and are to some degree protected by the priority they are given in housing privatization, on the assumption that housing privatization turns out to be an economic benefit.

It appears that the requirements for valuation of all housing, as well as for distribution of coupons in accordance with formulae, has proved far too burdensome to be implemented within any reasonable period of time. Accordingly, the Mayor of Alma Ata issued a decree providing that every resident of Alma Ata who has been a resident for five years or more and who occupies housing can obtain ownership of such housing without coupons. The result has been a dual system of housing privatization, at least in Alma Ata. Apparently the Housing Law of 1992 will now extend the same opportunities elsewhere.

According to popular reports, it takes less time to obtain housing if one is willing to exchange coupons for the housing than it does to obtain it for free, chiefly because the lines are longer for applications to privatize housing without the use of coupons. According to several reports the average time to obtain housing through the use of coupons is three or

four months. Claims are made that 40% of the housing of Alma Ata has been privatized; it is unclear, however, how much of the housing was actually private before recent privatization efforts began. According to some reports, about 20% of all the housing in Alma Ata consists of single family detached dwellings. Most of these have apparently been privately owned for many decades. If that is true then approximately 25% of the remaining housing supply has been privatized. It is clear that most of the privatization being accomplished involves apartments in large buildings in Alma Ata and elsewhere. Since Kazakhstan is primarily a rural country, it is likely that single-family detached dwellings also predominate elsewhere. Obviously privatization of single-family homes is much easier, conceptually for the occupants, as well as legally and managerially.

Given the enormous hurdles and the novelty of the concept to so many residents, the privatization effort must be seen as a substantial move forward on the part of the Republic. As housing is privatized, the basis for an actual market in sales and rental housing has developed, albeit slowly. Kazakhstanis choosing to emigrate to other N.I.S. countries have been a source of sales, and foreign visitors and new immigrants from other N.I.S. countries have been a source for rental and purchase. As a result a market has begun to develop, although it certainly lacks the fluidity and size required to produce a comprehensible price structure. For instance, rental values are far out of line with prices; the implied discount rate would appear to range from fifty to one hundred percent when comparing Alma Ata prices with monthly rentals. Fears regarding foreign exploitation have resulted in some barriers imposed to housing market transactions. Only residents who have occupied their housing for five years or more are eligible for privatization. In Alma Ata, the local administration has also restricted the purchase of housing to those deemed in need and to citizens. These rules have since been apparently overturned by a new Housing Law, but it is too early to see the practical effect.

In order to carry out housing privatization efforts, the Republic has made an effort to assign responsibilities among ministries in order to accomplish the most possible in a short period of time. The Ministry of State Property has been given primary responsibility for the privatization efforts themselves. The Ministry of Architecture and Construction is given primary responsibility for devising means to stimulate new housing production, to enact building regulations and to come up with solutions to particular problems created by housing privatization efforts. The relatively new Ministry of Land Relations and Land Tenure has been assigned responsibility for clarifying land tenure.

In furtherance of the privatization efforts directed at housing and other real estate, a number of key laws have been enacted: the Law on Land, the Law on Property (or ownership), the Law on Leasing, and the Law on Housing (also referred to as codes). Numerous decrees and regulations have also been issued to implement these laws. These laws have begun to define the primary principles for the ownership, use and disposition of housing and other forms of real estate as items of private property. They have also begun to define, although as yet imperfectly, the methods and alternatives by which land may be occupied and used for housing and other building purposes. Although a new Constitution has not yet been enacted, some key constitutional principles are found in all drafts to date and are embodied in the laws enacted. These principles include the right of private property, the right to be protected from arbitrary confiscation, the right to be compensated in the case of confiscation, the right to be protected from interference by others in rights of ownership and the right to dispose of property as one wishes.

The draft constitution and the laws recently enacted also establish a principle unique to Kazakhstani law and tradition: that land shall belong, in the sense of ultimate ownership, only to the Republic itself. It may be used and occupied by individuals or legal entities indefinitely, but its ownership is in the Republic. The draft Constitution and the Housing Law also proclaim the right of every citizen to housing. More than the declaration of a simple right to shelter, this statement appears to embody the Kazakhstani notion that everyone is entitled, if possible, to have a plot of land on which to have a house. Americans will easily recognize the identification of home with a single-family house on a plot of land as the notion of home.

Apart from the housing privatization effort, the Republic has also started major efforts to regularize land occupancy, paving the way for future efforts in development and providing the necessary linkage to privatization of housing and enterprises. The primary initial emphasis is on a complete cadastral survey with re-registration of all land occupancies and, thereafter, allocation of land for various needs. This effort also apparently includes identification of areas that are unused or under used in terms of their agricultural or other potential, definition of areas that should be protected for environmental reasons, definition of natural resource areas and similar matters. This effort could provide the groundwork for any uniform future system of property titling and registration.

Lastly, at the time of this writing, the Republic was close to the adoption of a new Constitution on which substantial effort has been expended. The Constitution is intended to define fundamental individual rights as well as the structure of

government. Many of the laws which have been enacted appear to anticipate certain constitutional provisions. As of the most recent draft, the areas appearing most in flux relate to relationships between national and local structures of Government, rather than in definition of property rights.

III. Assessment of Existing Laws

To the extent possible, laws were collected on all of the major subjects of interest with respect to the future operation of private real estate markets. Clearly not all applicable laws were obtained. It appears that all major laws enacted within the last few years intended to achieve privatization have been obtained. More difficult to obtain are the numerous laws or sections of codes which continue to be relied upon as the basis for more routine matters, such as purchase and sale of real estate, landlord-tenant relations, registration of ownership and lending and borrowing. It is very difficult to identify and obtain such laws, as it would be in the United States if one simply made an enquiry. With the assistance of a local lawyer, some portions of the Civil Code have been obtained and translation must occur before those laws can be analyzed. It is likely, however, that those sections obtained represent only a portion of applicable laws. In general where no new law has been enacted superceding old laws, laws promulgated during or before the Soviet period continue to govern. Such laws apparently include both laws of the former Soviet Socialist Republic and laws of the U.S.S.R. The following analysis is presented in accordance with subjects of interest and an analysis of the components of private real estate markets, rather than in accordance with the promulgation of particular laws.

A. Land Ownership and Land Tenure.

As previously indicated, Kazakhstan intends to maintain national ownership of land. The draft Constitution so states and everyone with whom the subject was discussed was anxious to indicate that that principle will not change. The fundamental principle that the state will continue to be the owner of all land and all natural resources contained in or attached to land derives, not as may be presupposed from the Soviet system, but rather from strong Kazakh tradition. The Kazakh people, having been nomads, considered the land to belong to all, as in the tradition of the commons. This old tradition is reinforced apparently both by the Soviet tradition and by the fear of the Kazakhs that other ethnic groups will end up owning most of the land of Kazakhstan. This strong feeling derives in part from the history of Russian invasion, occupancy and forced settlement of Kazakhstan, first under the czars and then under the Soviet leaders. As a result it is not expected that land

will ever be privatized in the fullest sense of that word. On the other hand, the draft Constitution, several laws and all those with whom the subject was discussed recognize that various rights of ownership will be granted for certain purposes in order to accomplish social and economic goals. Once the fundamental principle is understood one can then speak of "ownership" as a form of occupancy or use for defined or indefinite periods in accordance with certain purposes approved by law.

The constitutional provision is anticipated by the Land Code enacted in 1990. While recognizing that the Republic will be the exclusive owner of land, the Land Code also establishes the "right" of every citizen to a plot of land and provides for the division of lands within the Republic into categories in accordance with their intended purpose and use. The Code also recognizes historic forms of land tenure and legitimizes them. As has been reported for the Russian Federation, Kazakhstan has also historically had various forms of land tenure, most of which are being carried over into the new laws. The historically identifiable forms appear to be the following: hereditary life tenure, permanent use, temporary use, leasehold and indefinite occupancy. Although these forms of land tenure are addressed in the Land Code, no specific written definitions were found. They apparently have historically understood meanings except where legislation is more specific.

Hereditary life tenure is the form of land tenure closest to fee ownership, at least for natural persons. Translators sometimes translate this form of tenure as "ownership." When one holds land in hereditary life tenure, one may occupy it for life (subject, of course, to government confiscation and conversion to another purpose) and that same right of lifetime occupancy may be passed on to one's heirs. Apparently one perfects hereditary life tenure by constructing or growing something on the land, no matter how insignificant or how small. As a result, when one transfers ownership of the planted crops or construction, one also may transfer the right of hereditary life tenure of the land associated with the improvements. To the extent that this was in doubt before, it is now made certain by the Land Law and the Property Law. Presumably if one dies without heirs, the land reverts to the State without any right of occupancy in another person. Freedom to designate heirs appears to be present in some form but it is not clear that the land may be devolved to heirs without any restriction. For instance if the crops were planted or the house was constructed by the heads of more than one family (e.g., brothers), it may not be possible for one to bequeath the structure or the right of occupancy to heirs without the consent of the other.

The Land Code also specifically provides that this form of tenure is only available to citizens and only for specific purposes, including a farm, a residential house, a dacha and other limited purposes. Presumably this is a codification of traditional practice and former law. However, the Land Law also provides that other legislation may provide for the granting of this form of tenure in land plots for other purposes. The Land Law provides that a citizen must have been a resident for at least five years in the Republic to be eligible for this form of ownership.

The Land Code also provides for permanent "ownership" for collective farms, cooperatives, public enterprises, certain institutions and religious associations. It is not clear what this form of tenure is, but it is presumed to be similar to that of permanent use.

Permanent use is the other form of land tenure which approximates ownership. Since adoption of the Land Law, citizens, juridical persons, joint ventures and foreign citizens (and any other case established by subsequent legislation) may hold land in permanent or temporary use. Permanent use is not defined but appears by implication to be a form of tenure which lasts indefinitely until terminated by the government. Generally, citizens may have land for permanent or temporary use for the same purposes for which they may have hereditary life tenure. Apparently it is left to other legislation to determine the purposes for which land may be allocated for permanent use to legal entities and foreigners.

The Land Code also establishes three durations of temporary use tenure, apparently analogous to leaseholds. Short-term temporary use is defined as three years, long-term temporary use is defined as ten years, and long-term agricultural/livestock temporary use is defined as twenty five years. Temporary use periods may be extended for any period of time in accordance with determinations of necessity by the granting governmental bodies. Where there has been previous use with no established term, it is now formally recognized as permanent use by the Land Law, effectively transferring prior rights of indefinite occupancy into permanent occupancy rights.

Local governments (the holders and administrators of land) have the right to lease land to any person, juridical or non-juridical, citizen or foreign. The lease term is negotiable and can be for any period; by law the lessee has a priority right of renewal. Apparently further provisions are found in the Law on Leasing which has not yet been translated. Thus, subject to a review of the Law on Leasing, it would appear that the preconditions exist for the establishment of relatively permanent forms of land tenure sufficient to support long-term investment.

Some clarification of rights under the concepts of hereditary life tenure, permanent use and long-term leaseholds would be in order, but the fundamental concept necessary for long-term occupancy, transferability and exclusive possession of land appear to have been established, with one exception. That exception relates to the law on confiscation which is discussed further on in this assessment. There is probably today no precedent for very long-term leaseholds which could provide the economic equivalent of fee ownership. However, those with whom the concept was discussed believe that existing law would permit such leaseholds. To the extent that hereditary life tenure and permanent use were not considered adequate to achieve the same purposes, long-term leaseholds would be politically and institutionally feasible. Most importantly the new Land Law has established the transferability of land where there is transfer of the structures on the land. It is probably not possible to separate ownership of the structure from the associated land tenure.

The most serious shortcoming, apart from a certain lack of clarity with respect to land tenure, is the apparently absolute requirement that no form of land tenure can be obtained without approval of a specific purpose or use to which the land is to be put and, in the case of land in urban areas, an actual plan of construction. There is also an apparent inability to engage in transfers of land without some form of associated improvement to the land. These restrictions effectively preclude the acquisition of land for holding or speculative purposes and even appear to make it difficult, if not impossible, for someone to qualify for the allocation or acquisition of land for purposes of improvement and resale to others. It was at least the opinion of some informants that it would be possible for a "developer" to acquire a large parcel of land for purposes of division and improvement and resale to others. However, it was not clear, that a developer could legally or practically acquire land solely for purposes of infrastructural improvements and subdivision for resale, with housing to be constructed by others. Although land speculation is normally a phrase which does not generate supportive comments, it is in fact a form of land holding and market-making which is essential in private real estate markets. While probably not an essential function in the initial stages of privatization, it could become so later.

B. Housing Privatization.

Apparently the privatization of housing was a component of general de-nationalization and privatization of enterprises and property pursuant to the Law Concerning De-nationalization and Privatization enacted in June 1991. The Committee (Ministry) on State Property was given the responsibility for the privatization of state property while

local governments were given responsibility for privatization of communal (local) property. Apparently much housing is communal property and therefore privatization is by local governments and is subject to the idiosyncratic behavior of those governments. The coupon method previously discussed was adopted for purposes of citizen participation in all privatization efforts. Article 22 of the 1991 law provided for privatization of housing through the coupon method to all citizens who were occupying or leasing houses or apartments owned by the state. The law also establishes the ability of residents to take over maintenance and management of buildings when more than fifty percent of the units have been privatized.

Privatization of housing occurs mechanically through buy/sale agreements which are to be notarized, with issuance of certificates of title (technical passports) to the new owner. Interestingly, and a sign of the fact that hereditary life tenure is considered a form of ownership, those who already "own housing" by having hereditary life tenure are not permitted to receive coupons for purposes of purchasing housing. The first stage program for privatization, which includes housing, was to occur during the 1991-92 fiscal year. Obviously it will take more than one year. Acquisition of housing through state privatization is purely voluntary. No one is required to privatize his housing and it is not clear that there is any incentive to do so in the near-term, since there is no time limit on privatization. Until privatization, the occupant apparently has the right of permanent occupancy and cannot be displaced by anyone else.

The Housing Law of 1992 elaborates on the law of housing privatization. This law is apparently intended to address in greater detail various issues associated with the ownership and management of housing, including the management of housing which remains governmentally owned. Some provisions of prior law are simply repeated.

Perhaps most importantly the new Housing Law establishes the right of any citizen to build or purchase a housing unit even if the same person may obtain a unit by transfer from the state and even if he owns other units. This enactment was apparently necessitated by some ambiguity under prior law and varying decisions by local governments as to the right of citizens to purchase housing if they had other housing available. One person interviewed who had acquired housing from a departing emigrant reported that the administration of Alma Ata would not permit the purchase of housing by someone who was already considered well-housed until the new Housing Code was enacted. The new law also calls for a method of registering title to all housing and validates the ability of occupants to obtain state housing without payment or use of coupons. In theory foreign citizens are granted the same rights of purchase of housing as citizens but this may not be possible in fact.

The right to buy, purchase, lease, or continue as a tenant is established for every person who occupies state housing. The right of contract is also established between owners of housing and any other citizens with respect to the use of the housing. In the case of the leasing of state dwelling units the presumption is established that the lessee is responsible for all maintenance and repairs unless otherwise provided in the lease agreement. Such leases survive change in ownership of the housing. The right of eviction for damage, non-payment and wrongful use is also established at least for state-owned housing.

The Housing Law also establishes the principle of joint ownership with joint responsibility for common areas of jointly owned housing. It is then essentially left to the residents of such housing to determine the form in which they wish to exercise their rights of management, whether by partnership, a cooperative or other form. Some further detailing of general principles applicable to condominium ownership would appear to be suitable. However, existing law does establish that any organizations that are created to carry out joint maintenance do have the right of reimbursement from the owners and may obtain reimbursement by "compulsory levy." The condominium principle is established, with each owner owning the unit and all together owning the common property. The form of land tenure in such a situation is unclear.

C. Privatization of Other Real Property.

The basic law on privatization of 1991 provides for the privatization in the first stage of retail trade and small enterprises. That law also provides that acquisition of an enterprise may also include acquisition of the premises where the enterprise is located or the right of a long-term lease, but no greater specificity is provided. Based on interviews, it generally appears to be assumed that privatization of large-scale enterprises carry with it privatization of the real estate occupied by the enterprise or, in the case of small enterprises, leasehold rights. Where there are multiple tenants in a non-residential building, it is apparently presumed that the largest will own the building when that enterprise is privatized.

No real thought appears to have been given to the privatization of non-residential real estate per se. This is one of the more substantial gaps in the privatization process. On the other hand this is not seen as a priority at the present time, presumably because there is unlikely to be any substantial demand for occupancy of nonresidential real estate except by government agencies or in accordance with the expansion of privatized enterprises.

D. Real Estate Transactions

Unfortunately portions of the Civil Code dealing with basic real estate transactions have not been translated as of the date of this writing. There are apparently some older laws which deal explicitly with the purchase and sale of property, the leasing of property and the pledge of property to secure loans.

It is clear that there are accepted, standardized forms of buy-sell agreements for purposes of transferring ownership of real property, but there also appears to be freedom of contract and flexibility in drafting, now codified by the enactment of the Law on Property in 1990. It appears, implicitly, that all transfers of real property must be by written instrument. No further specification is provided regarding the rights and responsibilities of parties to the contract or rights upon default of either party, or similar issues.

When the Law on Leasing has been translated, more information should be available on the current approach to leasing. Certain problematic gaps exist in the definition of how and when ownership is obtained of real property. For instance, in the case of housing being acquired through participation in a cooperative, the participant is stated not to acquire ownership of the unit until full payment has been made for the unit. This is similar to the old law of land contract in the United States and can result in a substantial forfeiture in the event that the person contracting to acquire the property is unable to pay for it in full. Similarly, in the case of the draft law on individual house construction, the perfected right of occupancy of the land for housing purposes and ownership of the housing unit itself does not occur until construction has been completed. This leads to the problematic situation that both the builder and any potential lender are at risk until construction is completed. For the prospective house owner who contracts with a builder to build a house, the problems are even greater in the absence of adequate bonding.

E. Secured Financing.

While the author was informed that there is a law of pledge (or secured financing) that portion of the Civil Code has not yet been translated. It is fairly certain, however, that there is no established concept or law providing for secured financing in the manner in which it is known in the United States or other Western countries, including the right of foreclosure on the asset in the event that there is failure of payment. In the absence of a mortgage banking industry, this has not been a serious failure. However, in looking forward to the possibility of a private housing industry and the growth of

a truly private market in housing and other real estate, this is a critical gap that needs to be filled with new legislation and responsive institutions. Authorization was granted to the government to make low-cost loans for purposes of housing construction and acquisition. However, the maximum amount of loan available to any one person, given the recent rates of inflation, have apparently made the loan program fairly useless. At the same time, persons in the government doubt the desirability of having the government guarantee interest rates at very high rates during periods of inflation as a means of providing capital for housing construction. The alternative is private financing.

F. Titling and Registration

As has been reported for the Russian Federation there appear to be two systems for tracking title to property in Kazakhstan. One system consists of the land registry and tracks the right of use of land, apparently as well as the quality and economic value of the land. Apparently established primarily to address the tracking of agricultural land and its value for production, this system is to be maintained and updated pursuant to the Land Reform Code by the "land tenure service" under the direction of the new Ministry of Land Relations and Land Tenure. According to the Minister, members of the Ministry in each locality are responsible for re-registering all land rights of use in accordance with documents to be produced by the existing users and documents already on file. Apparently, those having hereditary life tenure receive certificates of title ("technical Passports" in Russian). Whether all land users receive such certificates is not clear. During the process of preparation of the new registry, the Minister indicated that every plot of land will be recorded in the records of each locality in accordance with its precise size, its boundaries, the purpose or purposes for which its use has been granted, the persons entitled to use it and the form of tenure possessed. This is to be accomplished both for urban and rural land. Obviously quite an undertaking, according to the Minister there are two and half million individual parcels of land to be re-registered.

In the case of housing, there is a separate computerized registry of property rights. Apparently derived from former records (still maintained) concerning occupancy of every residential unit within the Republic, this system operates independently of the land records and is apparently maintained by a different governmental agency in each locality, the Bureau of Technical Information. The Bureau of Technical Information appears to have precise information on every dwelling unit, and possibly on every other form of property, including the dimensions and actual plan layout of every apartment and its occupants. Apparently under privatization, when a unit is

acquired by the occupant or another, the change in occupancy and the fact of ownership is registered with BTI. Such registration, along with the possession by the new owner of the buy-sell agreement and a certificate of title (which may be the buy-sell agreement with notarization) constitutes evidence of title. There would therefore appear to be parallel systems of title to improvements: the certificate of title itself and registration with the Bureau.

From all that appeared, there is no coordination between maintenance of the system of land title and title to improvements. Since they are maintained by two apparently different, completely separate agencies, there is no reason to believe that there would be an exchange of information.

G. Eminent Domain Law.

The draft Constitution and various laws address the issue of permissible government confiscation. The draft constitution (Article 49) provides that property is "inviolable" and that no one can be deprived of it except by court decision. It further states that forced alienation is to be in the public interest and to include appropriate compensation and reimbursement of losses. The definition of appropriate compensation however appears to be a bit vague.

In the case of land, since all land is owned by the Republic, there is no concept of reimbursement for the loss of values implicit in the rights of occupancy of land. There is implicit recognition of some concern for the loss of the right of occupancy of land. In the land code, for instance, the owner of a residential land plot, when displaced, is entitled to a replacement plot and replacement residence if the residence itself is taken or demolished. It is not clear that such replacement unit or land plot is to be of equal value. It is also not clear how non-residential occupancies are compensated if land is taken. Since the principle of the right of reimbursement or compensation is established, the important corrections that need to be taken are in providing for adequate means of compensation and insuring that property is only taken for specific purposes.

Many of the laws indicate that property may only be taken in accordance with the procedures provided by law, but if there are specific laws which provide such procedures, they have not yet been obtained. Based on references in the Law on Property, there are special procedures on confiscation. That law does provide that compensation is to be provided in full for any governmental decision to discontinue ownership.

The primary remaining task is to determine how to value rights in land where the land is considered to be owned by

the Republic in perpetuity. Since market transactions attribute all value in the transaction to the improvements being transferred, some method of valuation of the residual value of land occupancy rights needs to be determined, perhaps through actuarial devices.

H. Property Taxation.

No general law on property taxation was obtained, but a Law on Land Taxation enacted in 1991 was obtained and translated. This law appears to be a substitution for prior land taxation law. Given the ownership of land by the Republic, the term taxation appears to be equivalent to both taxation and rental for land use. The user is in all cases responsible for the tax and can lose the right of use in the event that the tax is not paid for a period of six months. As best as can be understood, the rates of taxation established are so low as to make any attempt at collection appear worthless. It seems inconceivable that the cost of administration could be less than the amount of taxes to be collected. On the assumption that the rate of tax can be increased substantially, then the tax could be a major source of revenue to local government, which is entitled to 70% of the revenue, with 20% going to the oblast and 10% to the Republic. The tax is due in equal installments twice a year, in September and November.

A new system has been devised to tax improvements, but that law has not yet been obtained.

I. Sharing of Authority Among Levels of Government.

A Law on Local Self-government was enacted in 1991 and has been obtained but has not yet been translated. Pending a review of that law, the only analysis that may be made is based on interviews and inferences from other laws and from the draft Constitution. Apparently, the role of local government in terms of the exercise of independent authority has been a subject of considerable debate. The most recent draft Constitution involves substantial changes in earlier drafts. There has apparently been a major debate within the Republic on whether or not local soviets, the local legislative bodies, should be perpetuated or dissolved.

In the main, the relationship between national and local governments appears to be far more similar to the pattern seen in western Europe than in England or the United States. Local government agencies in the executive branch appear to be instrumentalities of the national government, with different ministries in the national government having their own local branches in each county, city and district. Similarly, the local executive appears to answer to the President of the Republic. Local legislative bodies appear to have very narrow

mandates -- enactment of discretionary portions of the local budget and some other functions. As a result, in theory, local discretion consists primarily in the administration of national law and national policy. On the other hand, in practice, the degree of local discretion appears to depend on the actual political authority and independence of the local executive. In the case of Alma Ata, for instance, the mayor appears to have substantial independent authority and exercises it.

According to some jurists, there is no very effective means by which the national government insures adherence to national law and policy by local administrations and this is seen as a problem. As a matter of law, the principle appears to be established that local executives and legislative bodies may enact decrees or local laws which are not inconsistent with national laws. In practice, where laws are very general, there appears to be substantial latitude for interpretation. This can result in conflict between local and national directives, as apparently happened in the case of housing privatization.

Any further assessment of the role of local government will have to await final parliamentary decisions on the new draft Constitution and assessment of the previously enacted Local Self-Government Law.

J. Land Planning and Regulation.

Complete master planning for land development is, of course, a tradition quite well established in the former Soviet system. The tradition continues despite privatization efforts. Under national direction, local governments provide for the complete planning and designation of the use and future development of all land in the jurisdiction. The Land Law provides an overall framework for the exercise of these responsibilities. The Land Law essentially provides for the classification of all lands into broad categories for future use. The categories are land for populated areas (urban land), forestry resources, reserve lands and agricultural lands. For lands within populated areas, local government is given primary authority for planning and regulation. The general plans are required to determine the principal uses for all purposes and permission is required from the local government before any building may occur. For certain localities, the general plans of the cities must be approved by the Cabinet of Ministers and boundaries for some towns and cities must also be approved by the Cabinet of Ministers, and for other localities, by the oblast. The principle of having greenbelts or "suburban green zones" is established and special zones are to be designated to protect against landslides and similar hazards.

At the local level, it is clearly contemplated that precise planning of all land use will continue. Because this is

joined with the notion of the allotment and allocation of land for specific purposes at certain times and for designated quantities government retains complete control over land availability and use for any purpose. Given this fact, the concept of land regulation as applied to private use of land has little meaning. If full privatization of real estate is actually to occur, there will obviously have to be a substantial relaxation of control. The key challenge is to identify a method by which land may be allocated for use in a manner which would then permit a truly free market in land to operate.

It was difficult to find evidence of planning or expectations for redevelopment of urban land for new purposes. Clearly, the government is accustomed to carrying out redevelopment of lands for new purposes. For obvious reasons, however, there is no experience with or conception of the private redevelopment of lands for new purposes. In fact, the system of tying the grant of land rights for a specific purpose discourages the conception of private redevelopment for new purposes. Again, this is an area which needs to be developed in order to encourage private real estate investment responses to new demands.

K. Building Standards and Regulations.

Under the Soviet systems, essentially all building was undertaken by governmental agencies or enterprises. As a result, there was no need for regulation of building by others or for the promulgation of building standards applicable to private owners. The Ministry of Architecture and Construction recognizes that this will be an important component of a newly privatized system and is desirous of addressing that problem as soon as possible. Apparently, there are numerous building standards which have been used by the government to guide its building. However, none of these are laws and therefore is not applicable to private persons. A high priority of the Ministry is to provide authority to the Ministry to enact such regulations as soon as possible. For the purpose, the Ministry has drafted a Law on Architecture and Town Planning which is intended to provide part of the foundation for the enactment of appropriate building regulations.

Like most parliamentary laws, the draft Law on Architecture and Town Planning (city building) is fairly general. It still appears to contemplate a governmentally driven market rather than a fully privatized market in housing and other building. It anticipates the promulgation of codes embodying building regulations and other regulations on new development. Presumably, such regulations would be enacted by presidential or ministerial decree. In the opinion of this author, the draft law needs to allow more latitude for private initiative than is suggested in the development of land.

However, the law does go a long way in setting forth the concept that every builder shall be responsible for the design of his own project, subject to governmental approvals. It also attempts to establish substantial rights in architects over the design of projects, the uses of their design and their right to be compensated for the design. It probably grants more rights to architects than would be common in the American system.

The law represents the commitment being made by the Ministry to the privatization of real estate markets and is therefore a step forward in the development of such markets. More attention to the role of the land subdivider is the primary need.

IV. Institutional Structure

A. Roles of Different Ministries.

To an outside observer, a source of considerable confusion is the division of responsibilities among different ministries in the privatization process. Contact was made with three different ministries, all of whom have some involvement in the land and housing privatization process. The Committee on State Property appears to have responsibility for implementation of the privatization laws themselves. However, it is unclear how much actual control by this ministry exists over local government officials who implement the housing privatization program. This committee would appear to have more influence over the privatization of enterprises. The Committee on Land Relations and Land Tenure, on the other hand, sees itself as exclusively responsible for the land registration and land allocation process. Although coordination may not be difficult between the two to accomplish the purposes of privatization, it will be necessary. For example, it is not clear how land rights in connection with the ownership of condominium apartments in large apartment buildings will be treated. Apparently, it has not been seen as an issue since it is assumed that the rights of occupancy of the land will remain. However, it is obviously desirable in terms of any future financial relationships and the stability of real estate that there be some certainty and clarity with respect to land rights.

The Committee on Architecture and Construction apparently has full responsibility for the implementation of national policy with respect to housing production, urban planning and urban land development. Apparently, the Committee has branches in each local government to implement its policies and responsibilities. This ministry also appears to be the natural source of legislation having to do with new development and housing production. It is the likely place for the promulgation or initiation of new laws on land use regulation

and building regulation. However, the boundaries it shares with the Committees on State Property and Land Relations are unclear. Particularly unclear again is the division of responsibilities with respect to allocation or sale of land for new development purposes, for privatization of nonresidential real estate and for confirmation of titles to land and to improvements. It is also unclear which ministry would take responsibility for initiating mortgage financing. It appears likely that the Committee on Architecture and Construction is the probable location for the financing of future state-produced housing. It is not clear where responsibility for promotion of private housing development and financing will be located.

Clarification of roles privately requires more coordination by the President or Vice President.

B. National/Local Allocation of Responsibility

In the absence of a review of the law on Local Self-Government, the relationship between the national and local governments is particularly unclear to the outside observer. A city like Alma Ata clearly acts as if it has substantial independence; this may be true of other cities in the Republic and of the oblasts themselves. This may be more of a de facto situation of lack of national control than an outgrowth of the actual legal structure. Based on discussions with knowledgeable observers and jurists, local governments are exercising substantially more independent authority than they are actually granted by law, presumably due to the lack of ability to carry out uniform national policy during this period of transition and the loss of traditional chains of command.

From all indications, it is unlikely that local governments will end up with the kind of legislative independence observed in the United States. More likely is a limited amount of administrative discretion in the implementation of national laws and policy along the lines of that more common to western Europe. Due to the geographical size and diversity of the country, however, it is likely that administrative discretion on the local level will be substantial as a practical matter. It is important to clarify the national and local roles in land use regulation, city planning and land allocation. This will involve difficult choices regarding the appropriate balance.

The decentralization of authority, especially over land allocation, offers the promise of greater sensitivity to local conditions and needs, but also the danger of substantial corruption in the distribution of an extremely valuable good. Attention must also be given to the degree to which officials at the local level in different parts of the Republic are as committed to the privatization effort as those at the top. All

officials encountered at the national level appear to be fully committed to privatization and knowledgeable regarding the government's orchestration of policies in concert with international agencies such as the International Monetary Fund and the World Bank. It is unlikely that the same degree of knowledge or sensitivity exists at all local levels. There is also concern that decisions made at the local level may vary in accordance with the preponderance of certain ethnic group domination in different localities.

Serious thought needs to be given to the degree to which, however, decentralization of governmental decision-making will encourage decentralization of the economic structure of the country, particularly in the real estate market. There are necessarily strong relationships between governmental investment policies and actions and the real estate economy. Observations of other countries appear to indicate that the degree of the decentralization of the real estate economy on the production side tends to parallel decentralization of government. If the Republic is to transform its housing production to a more decentralized, market-based system with multiple independent firms, a similar decentralization of governmental decision-making is likely to be required with respect to infrastructure investment and land use regulation.

V. Reform Strategy Agenda

Kazakhstan has made substantial progress in privatizing its economy and is clearly committed to continue these efforts. Any further reform strategy agenda supported by U.S. A.I.D. should build on existing and past efforts. It must also accept fundamental cultural and legal principles which determine the acceptability of different alternative strategies to the Republic. For example, the commitment to national ownership of all land is not expected to vary and should be accepted as a premise for the development of other strategies. Similarly, the tradition of single-family home ownership and an apparent preference for this type of dwelling, as well as its apparently lower cost of production than that of large blocks of flats, should be seen as an opportunity for the development of private real estate activities rather than as something to be modified in the name of city planning.

In terms of the legal foundations for a privatized real estate economy, the following areas need to be addressed in roughly the following order of priority: (1) clarification of the availability and rights associated with different forms of land tenure; (2) development of laws supporting secured real estate transactions; (3) developing an equitable and economically desirable means of allocating land for new development; (4) devising a means to bring closure to the

housing privatization process; (5) clarifying condominium and subdivision rules; (6) privatizing non-residential real estate; (7) unifying recordation of title to land and improvements; (8) clarifying landlord/tenant relations; (9) clarifying laws for real estate transactions; and (10) affording more flexibility in land use regulation.

A. Land Tenure

Unfortunately, the author does not have the benefit of a translated version of the Law on Leasing passed within the last three years. As a result, the author does not know the degree to which that law addresses the rights to obtain long-term leaseholds and the manner in which rights under them may be assured. With that caveat, one of the highest priorities is for clarification of land tenure alternatives available for long-term use of and investment in real estate in Kazakhstan. The inability to acquire fee simple ownership of land is not seen as an ultimate bar to the operation of a reasonable free market system in real estate. However, security of land tenure and essential attributes of ownership are essential to promote such investment, both by Kazakhstani citizens and by foreigners.

Several alternatives are available and appear to be permitted by existing law. All that is lacking is a greater degree of certainty regarding the rights and attributes associated with particular forms of tenure. Hereditary life tenure, permanent use and long-term leaseholds appear to be the best alternatives available for purposes of inducing long-term investment in real property. Each of these should be clearly defined in the law in order to provide certainty regarding the rights of someone who has land under one of these forms of tenure. In addition, if permanent use is to be a form of tenure attractive for purposes of long-term investment in land development, then duration and rights of governmental intervention need clarification. There is concern from a legal standpoint that a leasehold in excess of the number of years defining temporary use may not be available. In the case of hereditary life tenure, there needs to be a definition in the law that is understandable and which qualifies the right of transferability and exclusive possession, as well as the notion of indefinite duration.

If there is to be a truly, freely functioning real estate market, presently necessary linkage between tenure and land use needs reassessment. Serious thought should be given to separation of the regulation of use of land from the tenure granted. For example, if someone obtains a lot for purposes of a single family dwelling, in twenty years the appropriate use may change. The process for changing the use should not affect continued tenure, at least if one is to follow free market traditions.

B. Secured Financing.

A reasonable assumption is that privatization of the production side of the housing industry will not occur unless there is effective consumer demand. The government is reasonably concerned regarding the need for continued housing production to meet the needs of a growing population and to satisfy enough housing needs. In a privatized economy, however, the government should only be producing housing or providing the subsidies for private production of housing for those at the very bottom of the income ladder. Although only a small percentage of the population is capable of affording newly constructed housing, there is evidence of some demand for new individual house construction in the country. The government is quite reasonably interested in responding to that demand as quickly as possible.

Based on the experience of western countries, the availability of mortgage financing is a key to expanded, effective consumer demand for new housing, as for all capital goods. Although the creation of a mortgage banking system, with governmental support, is far beyond the scope of this assessment, one critical component will be a legal structure supporting secured transactions. A secured transaction is defined to involve a loan, the security for which is exclusively, or almost exclusively, real property. The security instrument may be called a mortgage, deed of trust, indenture or something else. To be effective as a security instrument, there must be the right under the law for the holder of the instrument to be able to take the property in satisfaction of an unpaid debt or to take the property upon the happening of some other default pursuant to the contract for the loan (such as failure to pay taxes which would cause a loss of the property to the government).

To the best of the author's knowledge, the legal foundation for secured financing does not exist and needs to be created. While not a difficult task, it involves a number of important policy issues, among them the right of the foreclosing lender to obtain the tenure in the land held by the borrower before default, the right of eviction of the defaulting borrower from the property, rights of recovery of any unsatisfied debt other than through recovery of the real property itself (i.e. deficit judgment), and responsibility for carrying out the foreclosure process and for handling any disputes. In most American states there are also substantial protections afforded to consumers who obtain financing, especially for home purchases, to avoid predatory practices. Even in the absence of a fully functioning mortgage banking system, the creation of a suitable legal underpinning for secured financing may generate private sources of financing out of private savings, as occurs. It also affords a means for the sale of property by owners on an installment payment basis.

In drafting the laws for secured transactions, consideration should be given to permitting the full range of potential loans for houses and other purposes, including shared appreciation loans, inflation index loans and so forth.

C. Land Allocations/Sale Procedure

Certainly one of the most pressing concerns with respect to any new development is to devise a workable and equitable means of allocating, assigning or selling land use rights for purposes of new development of housing and other real estate. The draft Individual House Building Law appears to contemplate the allocation by local governments of individual plots of land for the construction of new single family housing. As currently understood, the lots would presumably be given to those who agree to build houses, each of whom would have a certain period of time to build a house in order to perfect his rights to the plot. Thus, land would be given away explicitly for the purpose of inducing new house construction by those who could afford it. Each homebuilder would be expected to bear the full cost of new infrastructure required for the housing development, at least onsite utilities. These matters do not appear to have been completely resolved, but the principle of land grants for housing construction does appear to be clear. This is not necessarily an inappropriate policy, although it is likely that land will be made available without cost to those who can most afford to pay for it. Therefore, some thought needs to be given as to whether or not, as a matter of equity, it is desirable to make available the land for free. It may be particularly hard to stop that pattern, if initiated, when it makes less sense later to give away land without charge.

Of far greater importance is the question of how to establish a suitable market in land so that land is allocated efficiently by market pricing mechanisms for the most suitable uses. For this to be accomplished, it will also be necessary to free land assignments from use restrictions, except to the extent use restrictions are embodied in generalized land use restrictions.

Obviously, one potential approach is the auction method, already in use for purposes of privatizing certain enterprises. Another alternative is to solicit bids for parcels of land for development for particular purposes and make awards to the highest bidder who makes proposals responsive to the government's desires, somewhat like redevelopment agencies do in the United States with parcels for redevelopment. In either case, it will be necessary to consider alternatives which make available relatively large parcels of land for development for multiple purposes or for potential multiple ownership, through subdivision and resale, particularly in the case of single

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family house development. Presumably, this issue is being addressed to some degree in the Russian Federation based on this author's understanding that Ryland Homes is attempting to do single family development there. Perhaps something can be discovered from that experience of relevance to Kazakhstan.

D. Completion of Housing Privatization and Completion of Private Rental Market

Numerous persons mentioned the fact that there was no substantial incentive for existing tenants of government-owned housing to privatize. This would also appear to be the case from a simple reading of the applicable laws. Moreover, recently unveiled proposals by the City of Alma Ata to charge for services and management of housing do not indicate that the charges would be any less for those who own the housing than for those who continue to rent. Until a substantial difference starts to develop, it can be anticipated that residents would choose not to privatize until they have some reason to do so. On the other hand, it is extremely desirable, both to generate the demand for private housing services and to create a private rental market, for privatization to be accomplished in a reasonably short time. Therefore, consideration needs to be given to means to accelerate and bring closure to the housing privatization process.

As has been observed for other countries, one of the potential problems with complete privatization of the housing supply is the short-term absence of rental housing. It will obviously take some time for individually owned units, especially in large apartment buildings, to be exchanged so as to create a managed rental housing supply. In fact, that situation may not occur for decades if housing privatization continues in the current manner. Therefore, consideration needs to be given to the means of bringing closure to the housing privatization process, either by completing privatization to existing occupants or by providing a means whereby housing may be privatized as an investment with subsequent rental to occupants. One alternative would be to set a deadline for privatization by existing occupants, allowing purchase of existing units from the state by others for purposes of subsequent rental, if the existing occupants do not choose to privatize their units. Another alternative would be to allow existing occupants to sell or transfer their right of privatization to another party so that someone else may choose to privatize the unit and take whatever risks are associated with subsequent cost increases. Similarly, consideration should be given to converting state housing to fixed term renewable rentals after some established deadline for privatization so that occupants can consciously decide whether they wish to continue to rent or to own. Not all occupants may choose to

own. In the end, it would probably be preferable to have buildings be entirely owner occupied or rental units, with minor exceptions. It will be very difficult to manage rental housing as an investment, where it consists only of homes or of isolated units within apartment buildings. On the other hand, it is desirable to establish a private rental market.

E. Subdivision and Condominium Regulations

Although some of the existing laws clearly recognize the right of owners of individual apartments and joint owners of other property to manage their property as they choose, there are some gaps in legislation or condominium methods of ownership of multi-family housing and a complete absence of legislation regarding the subdivision, development and sale of lots. In the case of both condominium ownership and single family home subdivisions where utilities and streets may be in private ownership, the needs are roughly the same: a reasonable framework to permit joint management, financial responsibility and dispute resolution, along with clear individual responsibility for individual property. The laws need not be especially complex, but need to elaborate somewhat on the bare bones provisions currently existing regarding joint ownership. In addition, there need to be clear means by which condominium associations may enforce requirements for contribution to and reimbursement of expenses, probably through liens of the same nature that need to be established for purposes of supporting secured transactions.

With respect to the subdivision of land for development (or, more appropriately put, the subdivision of land leaseholds or other forms of semi-permanent tenure for development), legislation needs to be enacted to regularize responsibility for infrastructure, permissibility for subdivision and infrastructure development by developers for purposes of sale of unbuilt lots to others, and adequate consumer protection related to the foregoing, including adequate assurance of completion of infrastructure

F. Privatization of Non-Residential Real Estate

Under current law there does not appear to be a procedure or the legal foundation for the privatization of non-residential real estate separate from the privatization of enterprises which occupy the real estate. The general presumption has been that either there was no market for non-residential real estate in the absence of the occupying entities or that it would be impossible to privatize the enterprises without assurance of the premises which they occupy. It is not clear that either of these two presuppositions is accurate. In any event, a future response to

potential demand for non-residential real estate is required. The demand may be to accommodate new enterprises or to accommodate existing enterprises which have new needs and desires.

Efforts should be considered to separate the privatization of non-residential real estate from the privatization of enterprises. Different skills, investment objective and sources of funding are likely to be involved. An issue that needs to be addressed as soon as possible is the form of tenure to be granted in the privatization of enterprises which occupy non-residential real estate. If security of tenure is necessary to privatize the enterprises, it would be desirable to establish such tenure based on leaseholds of a given term so that they may be evaluated economically, both in terms of those acquiring the enterprise and in terms of those potentially acquiring the real estate if real estate is to be disaggregated as a separate commodity for auction or transfer.

Over time it is not unreasonable to expect changes to occur in the utilization of non-residential real estate, especially commercial real estate in the larger cities. There is the possibility of substantial pent up demand for expansion, more efficient reconfiguration or changes in location for consumer-responsive enterprises, especially in retail trade and consumer services area. In addition, there may be a growth in demand for office space. Although increases in demand may simply substitute for government occupancies in the short run, either substitution or demand for new space offers the opportunity for privatization of and investment in commercial real estate. Obviously security of long-term land tenure will be critical for purposes of inducing investment in real estate. Commercial real estate does, however, offer potential new sources of tax revenue and lease rental revenue for the government.

G. Unification of Title Records.

If, as appears to be the case, ownership records are maintained separately for land and improvements, it would be extremely desirable to move toward unification of title records. In addition, it is necessary to provide for recordation of leaseholds.

If the foundations of secured financing are provided, it will be essential to provide a mechanism whereby financial encumbrances can be recorded as a part of the title system in order to provide adequate notice to potential purchasers and in order to secure the liens of lenders. Similarly, it will be necessary to provide in the title registry system for a mechanism for recording contracts, covenants or other aspects of

common ownership developments, including condominiums and subdivisions. Over time, it is presumed that other features of real property interests, such as easements, covenants and licenses may need to be accommodated.

H. Landlord-Tenant Law.

Since the author was unable to obtain existing laws applicable to landlord-tenant relations other than recent enactments, little is known about legal presumptions, protections or provisions for landlord-tenant relations with respect to housing or non-residential real estate. Apparently there is some applicable law but its scope is uncertain. Clarification of the rights and responsibilities of landlords and tenants is critical to smoothly functioning rental markets and the avoidance of what could be politically dangerous predatory practices by landlords after privatization. On the other hand, given the lack of familiarity with the business of being a landlord, it is important to provide guidance through legislation regarding suitable landlord-tenant relations.

Recently enacted laws suggest, but do not make clear, rights of landlords with respect to rent expectations, eviction for nonpayment or damage to property and similar critical issues. On the other hand, legal guidance will be required with respect to expectations regarding unit habitability, landlord provision of services for units and similar issues of concern to tenants. Apparently the general legal presumption under applicable existing law is that the landlord is responsible for all services in the absence of an agreement to the contrary. On the other hand, governmental policy for state housing as stated in the Housing Code rental agreements in use in the few transactions which appear to occur (primarily with foreigners as renters) dictate exclusive tenant responsibility with respect to all unit services, costs and repairs. These issues need to be clarified.

I. Real Estate Transactions

In order to provide for smoothly functioning real estate markets, there must be agreed rules or presumptions, in the absence of contractual coverage, with respect to real estate transactions of an ordinary nature. For instance, it is important to define when title passes in the event of an installment payment arrangement. Apparently in some cases under existing law title does not pass until payment is completed. This has substantial disadvantages for potential owners and lenders. No information has been obtained on issues such as who bears the risks of loss during the contract period. In fact it is not clear that there is such thing as an enforceable contract. Generally in the draft Law on Individual Housing

Construction, the suggestion is made that rights to use of the land are not perfected until construction is completed. This could be problematic, as previously stated, for potential lenders. In order to determine what is really required, a more thorough investigation of existing applicable law is required.

K. Land Use Regulations

At the present time land use regulation may be said to be absolute. In theory the government, both through ownership and through planning regulation, controls all land use. Movement toward private real estate implies a significant loosening of government controls over land use. This would appear to be most effectively accomplished through a generalization of existing plans. Such plans could become a form of binding regulation governing private and public decisions. To this observer, there seems little reason to aim at the establishment of a two-tier planning/zoning scheme such as that common in the United States. Given the detailed form of planning that has gone on in the past, it would seem more practicable to utilize the planning system as the basis for a land use regulatory system in the future. However, new laws will be required to provide the precise procedures for application and approval of entitlements to development and use. Since such changes can have no meaning until decisions are made regarding the method of allocation and distribution of land for use and development, this task is given a lower priority.

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APPENDIX: SUMMARY OF LAWS COLLECTED AND TRANSLATED RELATED TO
PRIVATIZATION OF REAL PROPERTY

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I. Draft Constitution

Although the Republic has not yet adopted a new constitution, it is expected to do so before the conclusion of the recently commenced session of the parliament sometime in spring of 1993. The draft Constitution of June, 1992, has been revised and a new draft was published in November, 1992, and is now the subject of consideration and debate. Although changes have been made from the June Constitution to the November Constitution, provisions having to do with property rights have remained stable. They are apparently expected to continue to remain the same. If changes are made of any significance, this report will have to be revised. Only the June version has been translated and that is the basis of this discussion.

The draft Constitution has a number of sections, chapters within sections and articles within chapters. Section 1 regards "the citizen, his rights, freedoms and responsibilities" and Chapter 5 within that section treats "economic and social rights." Within that chapter, Article 19 provides that every citizen of the Republic has the right to be an owner (i.e., to own property). Further provision is made that no one has the right to deprive or restrict the rights of ownership other than in accordance with the constitution and laws of the Republic. This latter phrase is used frequently throughout the Constitution and, as noted by the ABA CEELI project, tends to water down the impact of constitutional provisions. Article 23 provides that every citizen of the Republic has the "right to housing." The next sentence states: "The state assists in exercising the right to housing by granting for use and sale dwellings from the state housing body and by encouraging housing construction." It would appear, therefore, that the state's obligation to provide housing involves only a one-time transfer of available dwelling units and that it will encourage housing construction in the future, rather than guarantee shelter to every citizen. However, this remains unclear. The reader will note that these articles only refer to the rights of citizens and not to persons generally. Article 6 does provide that foreigners will enjoy all rights and freedoms and bear all responsibilities established by the constitution, laws and international agreements; again however, subject to the exception where otherwise stipulated by law. It

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would therefore appear that foreign citizens may not have rights equal to those of citizens of the Republic and that legal entities may not have rights equal to those of natural persons.

Chapter 8 provides for "Bases of the Economy." Article 45 within this chapter provides that the economy shall include diversified forms of property, that the state will regulate economic relations and guarantee equality under the law for all forms and "subjects" (uses?) of property. Article 46 sets forth three forms of property: private, collective and state. It then defers to legislation the potential forms of ownership and uses of property, limits on ownership and guarantees of protection. However, Article 49 does provide that property is "inviolable" and that no one can be deprived of property except by court decision. That article further states that confiscation "in the public's interest" is to include appropriate compensation and reimbursement of losses.

Article 47 states that "the land, its depths, waters, vegetable and animal worlds, and other natural resources are within the exclusive ownership of the Republic of Kazakhstan." This article states the fundamental principle, probably not to be varied for many years, that the state will continue to be the ultimate owner of all land and all natural resources. However, the next sentence impliedly provides for the exercise on behalf of the Republic of rights of ownerships for certain purposes and uses in accordance with further legislation. This approach is consistent with prior and future plans for uses of land.

Article 48 provides that an owner may possess, use and transfer property belonging to him at his own discretion with a limitation that the use of property must not harm the environment or violate the rights and interests protected by law of citizens, juridical persons and the state. Other articles include Article 50 which provides for freedom of entrepreneurial activity and prohibits monopolies.

Chapter 16 of the Constitution addresses the Republic's territorial organization, including local self-government. Article 99 divides the country into regions (oblasts), districts (raions), cities and other units (e.g., town, village and) to be established by law. Alma Ata is given special status as the capital city. Article 100 states that each unit of government is independent and its administration subject to the laws of the Republic and Article 101 provides that local governments have independence in establishing their own local structures and shall have the authority to enact laws binding within their territories provided that the laws are within their jurisdiction. Article 102 addresses the powers of local Soviets.

II. Key Laws

A. Laws on Property Generally.

1. Land Code.

This law became effective on January 1, 1991 (adopted November 16, 1990) with the exception of Articles 36 and 38 establishing authority to obtain land taxes and lease payments for land use and providing for exemptions from the same. The latter became effective on January 1, 1992. The law is prospective and reserves to citizens and legal entities who have land parcels previously granted for temporary use all of their rights until they have reregistered their rights to "own" or use land. The adopting resolution instructs the Cabinet of Ministers to bring back a number of further proposals for legislative action as well as to carry out the Land Code itself. One instruction is to bring back proposals and legislative acts to provide for the right to "own" land as well as for granting land for temporary use under lease, for protection of environmentally sensitive lands, for establishment of national parks and to provide for the definition of parcel boundaries (cadastral survey). Article 2 establishes all of the fundamental principles regarding land ownership and use. Land is to be exclusive property of the Republic. Its purchase and sale, free transfer, and use as security are prohibited. On the other hand, each citizen shall have the right to a plot of land and nobody shall be deprived of the right to a land plot otherwise than in accordance with the law.

Article 4 provides for the division of lands within the Republic into a number of categories according to their purpose. There are seven categories and urban land uses all appear to be within one category. Article 5 provides for the transfer of lands among categories in accordance with their proposed use. Only the governmental body which makes the decision concerning the assignment of lands for use may transfer them from one category to another. If land has been granted to an enterprise by a particular local Soviet for a particular purpose, apparently the same Soviet must make the decision regarding its conversion to a new purpose. The power to grant lands for use, at least to individuals, collective farms, communal farms and nonforeign enterprises and organizations, is granted to the local Soviet of deputies in each jurisdiction. Article 7 makes explicit provision for public participation in all decisions regarding land grants.

Article 8 addresses "land ownership." Land for "life inheritable tenure," the most permanent tenure held by individuals, may be granted to citizens for specific purposes. Article 48 lists the purposes to include a farm, a personal

auxiliary farm, for gardening and livestock grazing, for construction and maintenance of a residential house, for a dacha, for inheritance or acquisition of a residential house and for traditional crafts and trades. It also states that legislation may provide for granting of land plots and "ownership" for other purposes. Article 48 also provides that except for farms, plots granted pursuant to this provision shall be registered in the name of families. A citizen must have lived in the Republic for at least five years to be eligible for this form of ownership. Provisions regarding inheritance are governed by the Civil Code.

Provision is also made for granting land for permanent "ownership" to collective farms, state-owned and locally owned farms, cooperatives, public enterprises, institutions and organizations and religious associations for agriculture and forestry. The size of land plots to be granted is determined by local Soviets for the property within their jurisdiction.

Article 9 provides for the granting of land for permanent or temporary uses. This may be to citizens, various legal entities, and joint ventures, foreign entities and foreign citizens and in any other case as is established by law. Citizens may receive land for permanent or temporary use for specific purposes. These include vegetable gardens and pasturing cattle.

Article 10 establishes different lengths of tenure: (1) permanent use, (2) temporary use, short-term, equal to three years, (3) temporary use, long-term, equal to ten years, (4) agricultural/livestock long-term use, equal to twenty-five years. In addition, any granting body is allowed to extend the term of temporary use for any period according to a determination of necessity. This article also grandfathered previous use with no established term and recognizes it as permanent.

Article 11 addresses the leasing of land by local Soviets to others. Anyone can apparently be a lessee, including foreign citizens and legal entities. The lease term is negotiable and is by agreement. Upon expiration the lessee has a priority right to resume the agreement (to renew the lease). Further provisions on leasing are contained in the Law on Leasing. Articles 12-16 establish the authority of each level of government to regulate and grant land rights. Broad authority is granted to the aul and village, town, district (raion) and oblast. The national government reserves the right to make decisions on the procedures for leasing to joint ventures and foreign entities and citizens, on ownership of especially valuable lands, and on regulating land relations among the oblasts.

Apparently land can only be taken away from one landowner or user and granted to another after a process referred to as "exemption" (withdrawal or taking?) (Article 17). Since each resolution granting land plots for use or ownership must state the purpose for which they are allotted, the implication is that land is only granted for a purpose. Changes in use therefore may require further procedures and approvals. Provision is also made for preservation of historical and cultural monuments. Article 18 establishes a priority for the granting of agricultural lands for agricultural use based on a determination of suitability; the direction appears to be mandatory and without exception. Article 20 appears to contemplate a procedure for granting lands for non-agricultural purposes that involves approval of a specific plan of construction, its acceptance, its inclusion with other plan for the area and then permission to proceed. Therefore ownership and right of use for a purpose appear to be granted simultaneously. In cases where ownership is already held, this appears to require a reapproval for a different use. Article 22 makes provision for a certificate of title which is evidence of ownership. An agreement is evidence of the right of temporary use or lease. Provision is only made for registration of certificates of title; it is not clear how leases or agreements for temporary use are to be recorded.

Right to land can be lost for a variety of reasons including failure to pay the land payment or land tax for three months after the deadline for payment, serious deterioration of the land by reason of harmful activities and violation of the terms of use. In order for the right to be lost there must be action by the local Soviet and then a court decision.

Article 27 establishes the very important point that transfer of ownership over structures and constructions on land carries with it the same rights of ownership or use held by the prior owner of the structures.

Chapter 5 addresses the "exemption of land" for public needs. I take it that this involves reservation, withdrawal or confiscation of land from private use.

As previously mentioned, Articles 36 and 38 and Chapter 7 establish the authority for land taxes and lease payments for land. There is also a broad grant of authority for full or partial exemption from land payments by the local Soviet (Article 38).

Provision is made for granting land to citizens for construction of residential single family houses (Article 56), gardening on plots of generally not less than 1/10th of a hectare with a garden cottage (Articles 58 and 61) and for

construction of dacha (vacation houses) generally with lots of 1/10th of a hectare (Article 60). In each case inheritance of the structure provides with it inheritance of the right of ownership (hereditary life tenure) of the lot (Article 61). In each case of a grant it is the lowest level of government which can provide land for single-family house construction and the district or raion which can allocate land for a dacha. A form of tenancy in common or joint tenancy appears to be implied where the land plot cannot be divided (Article 61).

The Land Code contains numerous provisions specifying the purposes for which land may be allotted and where such land is to come from (in terms of reserve lands, lands formerly in agricultural use and so forth). The number and elaborateness of these provisions simply reinforce the notion that land is generally allotted for a specific use and that authority must be granted to allot it for another use. For instance, in Article 69 specific permission is given for the body which granted a land plot for vegetable gardens to permit construction of residences or other structures on the land. The provisions particularly address the allotment for purposes of livestock and agriculture.

The background of the land allotment scheme also is an overall national and regional land use scheme. Generally land is assumed to be allocated into several broad categories, such as land for populated areas, forestry resources, reserve lands, agricultural lands. This approach is somewhat similar to the categories of lands owned by the Federal Government in the United States and their allocation for grazing, forestry, mineral extraction or other purposes. Thus, within this context, provision is made for how land may be granted for individual use or for enterprises. Article 72 permits land for housing and dacha construction to be granted from land allocated for populated areas, land in forests and land in reserves. Local government has complete discretion over the size of land plots to be made available for housing construction and dacha construction.

Section 5 of the code deals with lands of populated areas, comprising basic provisions about the intended use of land within settled areas and the boundaries of those areas. It also contains the grant of authority over lands within the boundaries of settled areas to the local government. The lands inside towns are to be used in accordance with the town's plans for development. General plans are required to determine the main directions of use, organization of public services, places for recreation and similar uses (Article 91). Permission is required before any building may occur. For certain towns, apparently general plans require approval by the Cabinet of Ministers and they also must approve changes in boundaries for

other towns. The oblasts determine the limits. The rights of use are declared not to change solely because boundaries change. Plans of land allocation and granting of land for use are required to be consistent with the town plan.

Joint ownership or rights to land arise automatically where there are multiple structures that belong to different owners. However, no provision is made with respect to pro rata ownership or financial responsibility. Article 99 establishes the right of continued use/ownership where a structure is demolished provided that the owner commences new construction within two years and provided that the town plan does not contemplate a different use. The implied use in the first case is residential. Where there is displacement, generally the owner is entitled to another land plot or another residence. Lands in common use and therefore owned by the community are defined and include those that one would expect, along with parking lots and garages. Explicit authority is granted for the use of common areas for such things as retail kiosks and advertising structures, so long as they are consistent with the primary use.

Article 108 establishes the principle of having green belts or "suburban green zones". Although certain inconsistent structures may not occur in such zones, other rights already granted to "owners" are protected. Presumably this means that gardens may continue. Whether or not dachas are allowed within green zones is not clear. Special zones are to be designated where land or special conditions needs protection such as landslide areas and forest zones. The private use and ownership apparently is still permitted. Specific provisions for the grant of land for numerous purposes including transport, industry, mineral extraction, pipelines, defense, communications and transmission, environmental protections, sanitation and so forth. Each is to be used in accordance with its primary purpose. The existence of a land cadastre is established by Article 180, et seq. The land cadastre is to include information both on who has the right of use and quantity as well as on land quality and economic value. Reference is made to a "land tenure service", apparently a body of officials charged with the undertaking of maintenance of a cadastre.

The code addresses the resolution of land disputes and states that they are to be dealt with by the courts, apparently with disputes between authorities who grant land and those who have grants or wish grants being treated in the nature of government contract claims. Proprietary disputes are dealt with by the commercial (arbitration) courts. Violation of the Land Law is made a potential civil, administrative or criminal defense in accordance with other legislation. Illegal squatting is illegal.

2. The Law of Property (Ownership)

This law was apparently passed and became effective on December 15, 1990. Its intent appears to be to reverse years of denial of the right of private property and to establish the right of property.

The law defines property as the right of an individual to own, use or dispose of things that belong to him as he chooses. Ownership is defined as the right of possession, use, extraction of income and other benefits, and disposal. (Article 1). Rights of transferability are established. (Article 2). Rights of ownership are stated to require exercise in a manner so as not to be detrimental to the environment or to the rights and interests of others or of the state. It is declared that citizens, foreign citizens, legal entities of the Republic and the Republic shall have rights of ownership. Local governments exercise rights of use of state property in the name of the Republic. Legislation is to define the rights of ownership of foreign citizens and entities.

The right is also established for transfer of property by an individual to a legal entity which he controls in order to engage in an enterprise. (Article 4). This law also establishes a principle of limited liability for legal entities holding property (Article 5).

Three forms of ownership are defined: citizens' ownership, collective ownership and state ownership (Article 6). It is possible to transform one form of ownership into another and to have mixed forms. It is also possible to have joint ownership, including what we would call property held in partnership (joint property) and to have jointly owned property without a definition of shares as in a tenancy in common (shared property). With respect to housing, provision is made that a person who is in a housing cooperative or engaged in housing or dacha construction obtains ownership as of the moment of total payment for the property, i.e., completion of installment judgments. The law also describes collective property, including property of partnerships and business companies and joint stock companies or associations and state property, including communal property.

All land, its mineral resources, water, air space, vegetable and animal kingdoms, natural resources, historical and cultural monuments are all declared to be the exclusive property of the Republic (Article 19). Property held and administered by local governments for various purposes, including housing, is defined as communal property (Article 20). Thus, almost all buildings maintained for public purposes appear to be communal property.

Stability of proprietary relations and guarantee of equality and equal protection of property rights, whatever their form, is stipulated (Article 23). Compensation is to be provided in full for any governmental decision to discontinue ownership. Expropriation is only permitted in order to impose a criminal penalty provided by law or in accordance with the procedures for confiscation or requisition established by law.

Land may not be the property of individuals, collectives or local governments. Interference by legislative act or decree of any state or local body may be rectified by a court procedure and any losses incurred are to be compensated in full.

3. Land Reform Law.

This law was adopted on June 28, 1991; most of it became effective on August 1, 1991. The primary purposes of this law are twofold: to provide for the allocation of lands that are not yet in any particular use for purposes of encouraging additional small scale agricultural production and livestock grazing; and to clarify, establish and stabilize existing titles to use of land based on past and current use.

The statement is made that every citizen and collective shall have a choice as to the form of land ownership and business activity desired in the carrying out of the land reform but it is not clear what this means (Article 2). The main directions are declared to be the creation of special land stocks for redistribution for more effective use, granting land for life inheritable tenure for the permitted purposes, redistribution of land in accordance with transformation and privatization of enterprises, establishment and definition of borders between rural populated areas and their surroundings and reregistration of documents giving title to land. (Article 4). A new state Committee for Land Relations and Land Tenure is created to oversee land reform.

While the primary focus of the law is on stabilization of parcel boundaries and distribution of land for agricultural purposes, the land reform process is also to establish broad areas of use particularly in rural populated areas and their surroundings, apparently in order to establish stable boundaries for the purposes of housing and accommodating the semi-urban needs of rural populations while protecting agricultural use.

A process of registration and reregistration of documents to clarify titles is provided for (Article 18-21). Until reregistration has occurred existing use is preserved. Existing forms of tenure are to be preserved; grantees will receive certificates of title for life inheritable tenure.

Boards of cooperatives or partnerships may also receive life inheritable tenure for certain purposes.

B. Laws Generally on Privatization.

1. Law Concerning Denationalization and Privatization.

This law was enacted on June 22, 1991. It is the primary law initiating the process of denationalization and privatization, including enterprises and housing. The Committee for State Property is given responsibility for implementing the law under the direction of the Cabinet of Ministers.

The law defines denationalization as the transformation of state enterprises into independent business entities and privatization as the acquisition by citizens and legal entities of pieces of state property or shares of state joint stock companies (Article 1). The law is viewed as regulating changes which arise in the process of denationalization and privatization while other laws are to control legal relations resulting therefrom, such as the law on Property and the Law on Local Self Government. The Committee on State Property is given responsibility for the privatization of state property while local governments are given responsibility for privatization of communal property.

Everyone is declared to be eligible to be a buyer of state property being privatized (Article 10) except state agencies to whom the property belongs. However certain items are subject to a qualification of not less than five years of residence. This is stated for the purpose of granting citizens a preemptive right (Article 10).

Denationalization and privatization are to occur in part based on applications (Article 12) although a program is to be developed and privatization is to be carried out irrespective of applications.

Denationalization and privatization may take the form of leasing, lease plus buyout, transfer under a concession, transformation under a joint stock company, buyout by work collective or sale through a comparative bid or auction (Article 14). In the main, privatization and denationalization are supposed to be commercial based on payment through privatization coupons and money. The coupon method is adopted for purposes of providing an equal opportunity for all citizens to participate (Article 16).

In the case of privatization of state agricultural enterprise property, the buyer of the enterprise property

acquires simultaneously an inheritable life tenure on the plot of land necessary for use of the property acquired. Local Soviets determine the appropriate allotment (Article 21). Specific provision is made for privatizing the state housing stock (Article 22). Citizens are permitted to buy a state or departmental apartment or residential house leased to them under a lease or any tenant agreement using privatization coupons and other means of payment.

Once residents have acquired more than half of the apartments in a state owned residential building they may form a cooperative or a partnership for purposes of maintaining and managing the building. Common services must be made available on a uniform basis within a local government's territory.

No specific provision is made for the privatization of non-residential property, except insofar as it is viewed as property of an enterprise or company subject to sale by competitive bid or auction or transformation to a joint stock company. Generally work collectives are given a priority and reduced cost for purchasing.

2. Presidential decree of September 13, 1991 concerning a program for denationalization and privatization in 1991-1992, first stage and regulations concerning the two-pronged mechanism.

This decree describes the use of the coupon mechanism and provides a detailed program for privatization and denationalization.

Coupons were introduced on the theory that it would provide everyone an opportunity to participate. The coupons can be used only for the purpose of acquisition of state property. They are only granted to citizens of the Republic who have a certain number of years of employment. The 1991-1992 coupons were only allowed to be used for privatization of agricultural property and other property to be privatized during that period. All members of a family above age of consent can aggregate their coupons for use. Coupons may also be inherited. Allocation of coupons is essentially based on years of employment in accordance with provisions for pensions. Additional coupons are given according to the number of children and for other purposes. All state owned residential buildings including those owned by local governments and shown on their balance sheets are to be privatized using the coupon method. Evaluation is accomplished based on the depreciated balance sheet value shown for each apartment (portion of a building) indexed upward in accordance with age (by 1.2 x 1.7 if built before 1984 and by 1.7 if built after 1984 and actual cost was built in 1991. Adjustments are also supposed to be made on the

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basis of location, architectural design, conveniences, district environmental conditions and story. A complete registry is to be maintained for the allocation for all coupons.

Sales occur through buy/sell agreements with notarization and issuance of certificates of title (technical passports). Anyone without housing can use coupons to attempt to buy other housing being sold by enterprises, organizations or others. Older agricultural workers are allowed to buy out their housing just for the coupons. Citizens who have inadequate coupons and do not have cash or savings may obtain special loans in accordance with the Decree of the President of March 19, 1991. Those who already own housing (inheritable life tenure) do not receive coupons. To the extent that the person has excess coupons, he may use them for the purchase of shares in state enterprises and other state property to be privatized.

The first stage program for 1991-92 involves the privatization of retail trade, consumer services, communal maintenance, small enterprises and housing. It is also to involve the beginning denationalization of medium size and large enterprises and certain branches of the economy, especially including low profitability and unprofitable enterprises.

The two basic methods established are the auction method and the competitive bid method. Both are applicable to small enterprises. The auction method apparently involves sale to the highest bidder. The competitive bid method apparently involves a negotiated bid where the person offering the most satisfactory total package is accepted. Only residents of at least five years are permitted to participate in auctions. The competitive bid approach may involve the submission of a plan for use of a privatized item and price shall not be decisive. The third method, shareholding, involves transformation of enterprises into joint stock companies.

In the case of housing, buyout is voluntary by means of the coupon mechanism. [Subsequently, housing was granted free of charge but it is still voluntary.] Coupons are not available for auctions or competitive bids. Apparently they may only be used to buy shares.

The goal for privatization in the retail trade sector is 50 - 60% of shops by the end of 1992. Generally half of consumer services are proposed to be privatized. Acquisition of an enterprise may also include acquisition of the premises where the enterprise occurs or the right of a long-term lease.

With respect to housing, it is the intent to make the majority of citizens the owner of housing and to provide freedom of choice in methods of meeting the demand for housing,

including residential house, apartment, joint ownership in a cooperative or lease of a house. It is explicitly stated that privatization of housing will not eliminate the development and implementation of state programs for housing construction. The objective of developing non-state construction organizations is also declared. Local government is charged with carrying out privatization of the housing stock.

C. Laws Regarding Housing Privatization

1. Housing Code

This law was adopted by the Parliament on July 1, 1992 and became effective on November 1, 1992. It repeals and replaces earlier laws, apparently including an earlier Housing Code amended as recently as 1990. Its intent, among other things, is to provide for the continued privatization of all housing other than housing in hostels and housing owned by enterprises that is no longer recognized as housing. The Code is divided into six large sections: Section 1 addresses general issues; Section 2 addresses property rights in housing generally; Section 3, by far the longest section, deals with rights in and the administration of housing which is continued to be owned or is constructed by the state or collective organizations; Section 4 deals with the rights of residents of housing cooperatives; Section 5 deals with exchange and subleasing of dwellings; and Section 6 deals with hostels and workers' housing. Essentially, the law consists of a combination of the one time provisions necessary to privatize the existing state and collective housing stock and continuing needs for laws governing both the administration of state housing and the exercise of private rights in housing.

The law establishes the right of every citizen to housing (Article 1). It is explicitly defined as involving "ownership," lease or "freehold" of a unit suitable for residence. The right is guaranteed against contrary executive or legislative action by local government. Housing resources are defined as including individually owned housing, collective housing, cooperatives, state housing, city or regional housing and enterprise housing. Uninhabitable premises are specifically excluded (Article 3). Use of dwellings for non-dwelling purposes is specifically prohibited, except for family businesses (Article 4). Use is not to lead to destruction or damage or disturb other inhabitants. Regular inspections by local government are mandated, with authorization to restore them, convert them for other purposes or demolish them (Article 5). Article 6 specifically authorizes management of housing resources by the owner or persons appointed, elected or hired by the owner. Local governments are not allowed to take over collective enterprise or individually owned housing.

(Article 7). The right to housing previously built at the partial or complete expense of the participants is recognized and all citizens are given the right to build or purchase dwelling units for ownership, as well to receive those being transferred by the state in accordance with law.

A system is to be established to register (record) rights and titles for all housing. The right to transfer of state-owned housing is also provided, either by coupons or without payment (Articles 9 and 10). Eviction cannot occur except in accordance with certain legal procedures and rights against third parties are granted to citizens who are deprived of their right of use of housing by others. At the same time residents' obligations to make certain payments, including taxes, and to observe any rules applicable to the housing are established. Generally foreign citizens are to have the same rights except as otherwise provided by law.

The right of use, lease and alienation by sale or other methods in accordance with the law and property rights (ownership) are provided for, with evidence of title to be found in certificates issued by local governments. (Article 14). There is even provision for joint ownership of a dwelling unit, a provision necessitated by the fact that many apartments and houses are occupied by more than one family. While the right of construction of houses is created, it is to be carried out on land plots allocated by local government for life hereditary tenure (Article 16). The law envisions the state's assistance in individual housing construction to involve the provision of construction material for sale and the provision of low cost loans. Sales are to be evidenced by agreements which are notarized and registered at the local major's or other executive body's office. Some or all of such agreements must be in writing. If the procedures are not followed the agreements are void. Article 18 establishes the right to life estates as a form of tenure, at least by inheritance or reservation, and the transferability of life estates.

Privatization of the existing state housing stock is provided for by Article 19. Buyout by all residents is to occur by the coupon method, or by other measures including free transfer. Joint ownership of a building is specifically authorized and the basic concept is that of condominium ownership, with each owning a unit and all together owning the common property (Article 21). Unit owners are authorized to form a cooperative association for purposes of maintenance and service of the jointly held areas. When organizations are formed they have the right of reimbursement from the owners and what is owed by each may be "levied compulsorily". (Article 24).

All owners who have their houses expropriated have a right of replacement housing (Article 22).

The right to own more than one housing unit is established; however at the same time priority is given to citizens who are registered as in need of housing to buy private housing pursuant to a right of preemption (Article 27). This creates considerable ambiguity regarding what the right of purchase. The section is of some historical importance because of the apparent decree by the Mayor of Alma Ata before the enactment of this law restricting rights to purchase housing to those in need of housing. Substantial discretion is given to local governments to prioritize citizen rights to purchase housing, even if they don't qualify for housing upgrading. This implies a continuing involvement by the state (or city) in determining free choice of housing.

The right to buy, purchase, lease, or continue as a tenant is established by Article 46 for every person who occupies state housing. However, even a person who continues to use a unit of state housing is granted the right to acquire other housing for ownership. There is a limit however on the amount of housing which each person is entitled to in the state resources (Article 39); each may only have one state unit.

The right of contract is established between owners and other citizens with respect to the use of housing (Article 47). In the case of state leasing of dwelling units, the general principle is that the lessee is responsible for all maintenance and repairs unless otherwise provided in the agreement. Leases survive the change in ownership of the premises (Article 51); whether this rule can be changed by contract is not stated. Grounds for eviction from state collective housing are provided (Articles 63, 89, 90). Generally systematic damage to the premises, six months of non-payment and wrongful use are grounds for eviction.

Housing cooperatives are continued but the right to obtain housing in a cooperative is apparently continued as a matter of queuing (Article 92). Apparently, the decision of the cooperative as to whether to accept new members will be based on some set of priorities or simple place in the line (Article 93). There are a number of provisions that govern the change in occupancy in cooperatives. Since all members of a family generally have some rights to housing that is acquired, there are numerous provisions dealing with succession of ownership, with reference to laws of inheritance, it is not clear why these are needed.

The last section establishes the general right to exchange dwelling premises, irrespective of the area (Article 110). Such an exchange is either viewed as transfer of a lease or an exchange under a cooperative. Subletting is also explicitly permitted, apparently without any right of approval

by the owner (Article 116). However the principle is established that the sublease terminates upon expiration of the sublease term or, where there is no term, upon 30 days notice by the sublessor. However there appears to be no provision for termination by the lessor except where the lease expires.

2. Cabinet of Ministers Resolution of July 20, 1992, No. 610.

This resolution provides certain technical regulations regarding housing privatization, primarily focusing on housing that is not subject to privatization (such as uninhabitable premises).

3. Cabinet of Ministers Resolution of April 23, 1992, No. 374.

These regulations establish special privileges to the transferred units from the state's stock without use of coupons for certain persons (subsequently made intentionally obsolete where the decision was made to grant the housing for free).

4. Miscellaneous Laws and Decrees Regarding Privatization of Housing.

One law provides educational employees right to privileges in obtaining housing and free communal services (Law of January 18, 1992, Article 28). A similar law addresses the rights of health workers (Law of January 10, 1992, Article 41). A presidential decree exempts war veterans and their families from the requirement to make payments for communal services (heating, water, gas, and electricity) and provides for them to be granted their housing free of charge, a presidential decree grants additional privileges to the disabled. The Law of June 21, 1991, Article 39, extends special privileges to the disabled; this includes a 50% discount on communal services.

5. Mayoral Decree of September 15, 1992 Regarding Housing Privatization, No. 406.

This decree established that the city would transfer free of charge all of the state housing stock administered by the City and that all those who chose to take the housing for free would not receive coupons. This decree was considered of dubious validity under law of the Republic. Now it appears to have been validated and superceded by the Housing Code.

D. Law on Land Taxation.

This law was enacted on December 17, 1991 and consists of amendments and/or substitutions for a prior land taxation

law. Most types of land subject to any private use are made susceptible to taxation (the land tax may also be viewed as a lease payment). The principles of taxation established are that the amount of the tax would be based on the quality and location (and water supply available to) a parcel of land and not on any results of business or other activities on the land. The land tax is an annual fixed payment for a certain unit of land area. Agricultural lands, of course, are taxed primarily based on the quality of the land.

With respect to urban lands and rural town lands, the user is responsible for the tax. The basic tax rate to be levied is established on a per square kilometer basis. The rate is then varied in accordance with the city or settlement involved. The highest rate is for Alma Ata at 7.5 rubles and the lowest is for rural populated areas at 0.1 rubles. The tax rates are so low it is inconceivable that they are worth collecting. Even tax rates on industrial lands outside populated areas only range from 10 to 1,200 rubles. The range permitted local government in varying the tax rate in urban areas is to reduce it by as much as 50% or increase it by as much as 100% in terms of parcel by parcel variation based on the particular characteristics and locational determinants. Numerous exemptions from land taxes are provided including those for war veterans, the disabled, families without an earner, families with a large number of children, low income families and certain farmers. The tax is due in equal installments twice a year on the 15th of September and the 15th of November. Of the tax proceeds, 10% goes to the Republic, 20% to the region and the balance to the local government.

E. Draft Law on Individual House Building.

This law has been drafted in the Ministry of Architecture and Construction, apparently by a working group set up by a Decree of the Vice Prime Minister dated April 13, 1992, No. 4-1p. The primary purpose of the law is to establish procedures whereby land is made available for persons to go forward to build individual (i.e., single family) dwellings. The law primarily contemplates that owners will either build or contract to have built homes on individual lots for their own use. It does not clearly contemplate the acquisition of a large parcel of land for the construction of numerous houses and their sale to other persons. This weakness is implicit in the first sentence of the law, although apparently not intended.

The basic principle established is that individual dwellings can be constructed at the expense of individual citizens who have received allocation of land plots for such purpose, either by their own labor or by contract with others. The concept is also stated that individual houses contemplated

to be built in areas designated for such purpose and having adequate infrastructure. Such houses are contemplated to be constructed on land plots which have been allotted for hereditary life tenure for dwelling purposes.

Article 2 establishes the right of every citizen to obtain a plot of land for such purpose, apparently interpreting the constitution and echoing similar provisions. It is also explicitly stated that the mere fact that someone possesses a dwelling by ownership or by lease in the governmental housing stock does not preclude the allotment of a land plot for an individual dwelling. Those who already possess or own individual houses have the right to re-register them under the draft law provided that they meet certain code standards. Apparently the intent is to insure that certain standards are met before such dwellings are legalized under this draft law.

Freedom of design is granted by Article 3, along with a choice of size so long as minimum health and other standards are met and as long as space is maintained for fire prevention and other purposes. The allotment of parcels is, of course, to be in accordance with the Land Code and the number to be allotted is to be determined by the town planning documents. Implicitly, the contemplation is a system of allocation of land plots without any payment, or at least without competitive bidding. Plot size is to be determined by local legislative bodies. Population control is implicitly admitted in certain localities, since the number of land plots to be made available to non-residents is to be determined by the regional and local governments. One must apply for allocation of a plot. The principle is first-come first-served (Article 5). However, a priority right is also granted to those already registered as needing housing improvement, for veterans and for others. How such priorities are to be worked out is not clear.

It generally seems to be contemplated that areas would be specified and a number of lots will be created, their rental rate established and then notice be given so that individuals may come and request them (Article 6). There is an application procedure whereby the applicant must indicate where he lives when he is applying and any grounds for having priority.

Right of ownership to the structures to be built is established based on the land code (Article 21) and, in conformance with the housing code (Article 14) the right to disposition of the house is granted as well. Unfortunately, the draft law provides that the right of ownership only arises after completion of construction, causing obvious difficulties in terms of financing and precompletion rights (Article 8). There are a number of other cumbersome procedures with regard to prospective confiscation, some of which simply seem to repeat

those found in other laws and other of which appear to attempt to make provision for the nature of compensation. There also appears to be an effort to prevent a confiscation of a plot for purposes of turning over the land and the house to another person for the same use (Article 9, paragraph 5). This is probably intended to restrict arbitrariness. There's a lot of vague language with regard to the state's intent to promote individual housebuilding by various means, regarding the duty of local authorities to assist by providing financing, infrastructural and other support but there appear to be no binding provisions in these matters. There is a provisions providing that financing is permitted and that there is a right to obtain a "credit" (loan) for building single family houses and a recognition that loans will be extended where there is assurance of repayment. However, there is no effort to specify procedures for providing for secured financing or to specify the source of financing itself other than a general indication that when its included within the budget of the Republic then its available.

Article 14 addresses the financing of infrastructure. Contemplated appears to be that creation of special funds for the purpose from local budgets and voluntary contributions by those who are building houses. However, there is no attempt to provide for assessment districts or similar mechanisms common infrastructure. There is a provision that all facilities located within the boundaries of the plot that it to be occupied shall be at the expense of the occupant. Provision is also made for mandatory or voluntary (it is unclear) insurance of houses based on the insurance law. Apparently insurance is mandatory since dwellings in seismic risk areas are subject to obligatory insurance.

The draft law also provides for the equivalent of income tax deductions for mortgage payments and insurance costs for individual homes.

A number of general provisions addressed liability for quality of construction, including segregation of liability for the construction itself, for building materials and for engaging in construction without a permit. There is very little detail but the attempt appears to be to insure that there is responsibility for different elements of construction. Lastly the draft law provides that foreign citizens shall have the same rights as citizens with respect to individual housebuilding except that confiscations may be specified by other laws.

F. Draft Law on Architecture and City Building.

The purpose of this law is to set forth the basic framework for independent architectural design, protection of

architectural design copyright, allocation of responsibilities within the government over architectural regulation and city building (town planning) and related matters. It is apparently intended to be the basis for subsequent building regulation.

The draft law consists of seven sections within which there are various articles. The first section is introductory; the second addresses the rights of architects, consumers of architectural work and liabilities for builders and architects; the third addresses state regulation and allocation of responsibilities; the fourth, overall standards; the fifth, the basis for building and land use regulation; the sixth, penalties for violation of the law; and the last, international relations. Apparently, the draft available to the author has been superseded by a subsequent draft which has not yet been translated; in addition, the draft available is not very well translated. As a result, the summary should be updated subsequently.

The first section establishes some basic principles, such as the scope of regulation of architecture and city building to be primarily in urban and other settled areas, and to include both building and landscaping. The basic actors are referred to: customers, architects and designers, and contractors.

In the second section, certain rights are established on the parts of citizens, architects and others. The basic principles established involve the right of citizen participation in town planning, the right to land for private house construction, and the right to a decent living environment. Rights are also afforded to architectural unions and other organizations to participate in planning and the right of a customer or investor to carry out the design of his choosing is established. They are also allowed to choose architects as they wish. Intellectual property rights are established in architects and designers. Architects are given substantial copyright protection, including rights of future income from production of the architectural documents. Architects are also given the right to recover all rights of use of a drawing or design in the event it is not used within three years.

Section III establishes that the State Committee on Architecture and Construction and their regional and local administrative units will have principal responsibility for carrying out architectural and city building policies. The State Committee will also be responsible for establishing various regulatory bodies.

Section IV appears to establish the need for a type of environmental impact statement on major projects, presumably taken by analogy from requirements in other countries, including the United States. Provision is also made for the establishment of architectural and building regulations, presumably by subsequent decree or regulations issued by the State Committee on Architecture and Construction. Thus, there are to be national regulations for building. Assignment of land for ownership and use is to be carried out in accordance with the architecture and town planning program, and therefore pursuant to governmental decisions. One article attempts to identify a source of funding for town planning activities, including taxes on lands, penalty fees and voluntary donations.

Article 33 establishes a period of liability for builders equal to five years after construction.

Subsequent sections establish the principles of having a system of building inspectors, of imposing penalties and fines in the event of violation of rules and regulations, and licensing requirement for contractors or builders, to be enacted by regulation.

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Presentation and Seminar for Officials
of the Republic of Kazakhstan
on United States Laws
on Real Property, Housing, Land Development
and Government Regulation
of Private Property

January 13, 1993

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Types of Laws in the U.S.A. (California)
Related to Land Development and Building

I. Constitutional Laws - Relation of Citizens and Government

- A. Right of private property (includes land and everything on it, below it and above it, with some exceptions (known as real property) and moveable possessions (personal property): right to use, to exclude others from its use, to alienate it (sell, give, bequeath).
- B. Cannot be taken by the government except for public use or purpose and with just compensation (market value).
- C. Implied is the right to hold and use property for any purpose subject to the state's right to limit use in order to promote the best interests of all or to prevent harm to others. Property ownership is not for a specific use but for any use not prohibited.
- D. For some special lands (oceans, beaches, lakes, rivers) the right of use is more restricted than for other lands, especially where the private owner received the land by grant from the state, e.g. navigable waters.
- E. Remember that from the beginning of our country's European domination the land was assumed to belong to the person who occupied it, either because some European King or Queen granted the right of ownership to the discoverer or settlor or because of laws adopted by the state granting land for settlement to those who went to live on it.
- F. Constitution reserves most powers to the states to regulate private property.
- G. No right to shelter (or food or clothing)

II. Federal Statutes - Laws Passed by U.S. Congress

- A. Establishment and regulation of banking system
- B. Financial assistance for housing
 - 1. Guarantees of bank loans for housing construction and housing purchase
 - 2. Established institutions to purchase secured housing loans from banks and to hold or resell them to investors

3. Funds for construction and maintenance of municipal and state housing for those who cannot afford private housing.
 4. Funds for vouchers for low-income people to rent private housing
 5. Funds to reduce interest rates for the construction of low-income and moderate income households
- C. Redevelopment and community development assistance
1. Provides funds to cities to buy and demolish obsolete and deteriorated property (residential and nonresidential) and to make it available, after planning and assembly, for new buildings to serve new purposes.
 2. Grants and loans to cities for planning, for special projects and for research, and to carry out economically productive projects in areas of economic depression.
- D. Environmental impact statements required for projects of Federal government

III. State Constitution (California)

- A. Establishes relations among governmental units
1. Provides that state law controls except for matters of purely local concern
 2. Allows municipalities to legislate until and unless contrary state laws are passed, even in matters of statewide concern
- B. Home-rule authority
1. Grants every city and county authority to regulate private behavior for health, safety and environmental purposes.
 2. This is source of many local laws.
 3. Local governments control their own affairs and can raise revenues through fees and taxes

- C. Regulates boundaries
 - 1. State is divided into a fixed number of counties and boundaries do not change.
 - 2. Cities can change in number and boundaries
 - D. Also makes further provision for citizen rights
 - E. Establishes limits on taxation
- IV. State Laws or Statutes (e.g., California but also most states)
- A. Types of Real Property Interests
 - 1. Fee simple (all that one can own): unlimited period, to center of earth and to the sky, without restriction except for normal governmental regulation)
 - 2. Restricted fees: life estate (only for one's life and someone else has the remainder), so long as used for a specific purpose.
 - 3. Leasehold: right of exclusive use, possession and occupancy of land or a building or part of either for a number of months or years (30 days to 99 years); agreement establishes who is responsible; shorter the lease, the less the lessee's responsibilities
 - 4. Tenancy at will (right to occupy until told to leave, usually on 30 days notice); tenancy from week to week or from month to month; for farms, from year to year.
 - 5. Easement: right to make use of some part of another's property; examples -- roadway easement to reach other property, water line easement, view easement, parking easement.
 - 6. Restrictive covenant: agreement with neighbor to do or not to do something on my property; used very frequently in new residential neighborhoods with special private recreational facilities and in large commercial developments where parking and roadways are shared.
 - 7. Can divide up fee: subsurface or mineral rights, air rights, water rights

[Handwritten signature]

B. Creation of interests

1. By contract - most typical
2. By law - implied easement or implied tenancy from month to month where no agreement

C. Laws Governing Transactions in Real Property

1. Freedom of contract: any persons who wish to buy and sell or rent
2. Agreements for sale or for leases of more than one year must be written
3. Cannot subdivide land for sale except by a special procedure controlled by government (see Subdivision)
4. Disclosures required to purchasers of known problems or defects and for purchasers of new residential lots, houses or apartments for sale of expected future charges for any joint facilities
5. Each county (oblast) provides a registry to record deeds of sale but is not responsible for assuring proper title; each purchaser must assure himself that he gets what he wants; therefore all purchasers get title insurance from a private insurance company guaranteeing purchase and showing all restrictions on property by earlier agreements and showing liens. The title insurance company also usually makes the transaction complete by holding the money and the deed.
6. A deed is required. There are basically two kinds: a warranty deed, guaranteeing that the purchaser will get full ownership without any undisclosed restrictions and a quitclaim deed, simply granting the purchaser whatever the seller has.
7. Brokers are usually involved in bringing buyers and sellers together; because of their importance, especially for housing purchasers, they must be licensed, must disclose a lot of information to the buyers and must treat seller and buyer fairly, helping to exchange offers and counter offers and to make an agreement. For

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housing a broker will also often find the buyer financing for the purchase from a bank (usually 80% of the price). The typical commission to a broker is 5-6% and they have a common list of everything for sale at all times.

8. Commercial property and large residential transactions normally involve lawyers and brokers.

9. Options: It is possible to buy the right to buy property, within a certain amount of time, perhaps 6 months or 5 years. It must be in writing and the essential terms (price, time) must be definite and certain. These are commonly used by developers of land for a new use where they must first determine whether they are permitted to do what they wish or where it will take a long time to prepare plans and designs, obtain financing and assess demand for the product and its costs. No one wants to undertake the expense unless they control the land. An option gives control. It is usually recorded so that no one else can buy the land.

10. Inheritance and Gift Laws ..

D. Laws Governing Landlord and Tenant Relations

1. Basic principle: landlord is entitled to rent and tenant to the premises and associated services; if rent is not paid, tenant is evicted.

2. Generally, for nonresidential property, everything is a matter of specific agreement. If the agreement is silent on a subject of responsibility, the owner (landlord) is usually responsible. It is common to lease land for many years so that a tenant (lessee) may erect a building. When leases are very long, the lessee has the economic equivalent of land ownership; in the U.S.A. 99 years is usually the longest; in England, some leases run over 500 years; the rent may be paid in a lump sum (price) at the beginning or monthly, semi-annually or annually; it may be fixed or adjustable periodically. For long leases, the tenant owns buildings erected on the land and may do with them as he wishes so long as there is no injury to the value or quality of the land.

3. Residential tenancies usually involve shorter periods - from a week to several years. Generally landlords have certain responsibilities by law. For instance the dwelling unit must be habitable (in good condition, with proper sanitary facilities and heating, without infestation). A minimum notice is required to force someone to move out, usually thirty days. Rent is usually paid monthly.
4. If landlords do not provide proper services, tenants can withhold rent by placing it in a special fund or, in some cases, make repairs themselves and deduct the cost from the rent. Tenants are not usually responsible for repairs or maintenance of the building except where a complete house is rented.
5. Typically private rental housing is of two types: apartments in large buildings, all of which are owned and managed by one person or legal entity; and houses or apartments in small buildings where one apartment is occupied by the owner. More recently apartments in large buildings are all owned (condominiums) and some may be rented. The building is then managed by an owner's association or contractor to the association.
6. Evictions: law governs the eviction process. For failure to pay rent, the most common reason, a notice and chance to cure must be given. Then the landlord must go to court for an order of eviction. The order is enforced by the police. Landlords are not allowed to evict by themselves and are liable to the tenant if they attempt to do so.
7. Rent control - some cities control the rents which may be charged where housing is in short supply; must allow fair return on investment. In some cases rents are always controlled, in other cases only until the occupant leaves. Most controls allow an annual increase based on some index.

E. Laws Regarding Joint Ownership of Housing

1. There are no laws governing joint ownership of nonresidential land or buildings; therefore it is permitted by agreement without restriction.

2. Types of joint ownership

- a. Joint tenancy: each owns an undivided interest in the whole property and the survivor gets the whole property
- b. Tenancy in common: same as joint tenancy without right of survivorship (each interest can pass to another); can be divided by court procedure known as partition if division is permitted by other laws.
- c. Cooperative: each member has shares in an association which owns the building and a right to occupy one or more apartments; usually approval by the members is required to sell/buy shares which equal an apartment.
- d. Condominium: each owner owns an apartment (or more than one) and an undivided interest in all common or joint spaces or land areas (owned or leased). This is preferred.
- e. Common interest development (or planned unit development or townhouse condominium): same as condominium but these words usually refer to ownership of lots of land in one development (rather than parts of a building) where each owner owns a lot for a single house and the house and all owners jointly own the streets, water, sewer lines, private recreational space and buildings and other infrastructure within the area of the development. In the U.S. the land for the lots is owned individually and the other land is owned jointly. However, it would all be leased land.

3. Condominium or common interest development laws do the following:

- a. Confirms the validity of this form of ownership and provides means for creating one declaration.
- b. Establishes form of governance of the common elements, including legal status of association.
- c. Provides for allocation of maintenance responsibilities and right of association against defaulting unit owner.

- d. Establishes voting rules for association and method of organization.
 - e. Provides for adequate description.
 - f. Requires adjustments where changes in boundaries or number of units.
 - g. For existing buildings, may grant priority rights of purchase to existing tenant.
 - h. Obligates all to contribute to upkeep.
 - i. Allows unit to be rented to another or sold or mortgaged.
 - j. Requires avoidance of harm to another unit.
 - k. Prohibits individual occupancy or use of common space except as association allows.
 - l. Makes unit owner exclusively liable for taxes; common elements are not taxable, their value is allocated.
 - m. May provide special disclosure requirements for creators of such development of buildings, requiring approval by the government of the disclosure statement before providing it to a prospective buyer; the disclosure usually described the future costs and the time when the developer will no longer control the association created to manage the common elements and which common elements must be furnished.
 - n. May require annual estimates and allocation of reserve funds for future replacement of capital items (roofs, boiler, driveways).
- F. Laws about Town Planning, Land Use Regulation and the Environment.
- 1. Although generally administered by local government there are several important state laws in this area. California is the example chosen; it has elaborate and advanced laws in this area.
 - 2. Local Planning Law.
 - a. Requires every city and county to prepare a general plan for its territory, including

specific elements for land use, transportation, open space and conservation of natural resources, recreational, housing development and improvement and other subjects (noise, seismic safety). The general plan does not have a direct impact on private property rights but it does for government action. Includes goals, objectives, spatial plan of development, proposed densities, plans for infrastructure, standards.

- b. Requires every city and county to adopt a zoning law which is consistent with the general plan; this is the most common form of direct land use regulation in the U.S. but it has changed a lot in the last 80 years. Zoning generally involves division of an area into zones, each of which permits different uses, intensities of development and development characteristics; they usually allow some kind of development without any special approvals (only a building permit showing compliance with the laws) but many kinds of development requires discretionary approvals.
- c. Requires every city and county to have a planning commission (5 to 9 persons) to prepare the plan and make decisions on development approvals.

3. Subdivision Law

- a. Prohibits division of parcels of land for sale (or long-term leases or financing) without compliance with the law and local rules, all administered by cities and counties.
- b. Establish minimum requirements for streets and other infrastructure, reservation of land for parks, schools and public facilities and requires compliance with zoning and general plan where minimum sizes for parcels are established;
- c. This law's basic purpose is to regulate the development of new land on the fringes of settled areas for single family houses and other purposes.

- d. This law is used to protect agricultural land from division into uneconomic units for continuing agricultural units for continuing agricultural use and to prevent development for urban purpose where not desired. Minimum lot sizes range from 600 square meters to 100 hectares.
- e. Each city and county must adopt local laws (regulations) to implement this law. Each must require a land survey and a recorded map to describe each new lot created. The subdivider generally must give a bond to guarantee installation of the infrastructure required in order to protect the local government and future owners.
- f. No lots may be sold until the final map is recorded creating the lots and the bond for improvements is given before recording the map or the improvements are installed.

4. Environmental Impact Report Law

- a. Requires that an evaluation be made of the environmental impacts of every project by a state or local agency and of every private project for which a state or local agency must give a discretionary approval.
- b. Very small projects or those with little impact (e.g. one house) do not require such evaluation.
- c. Large projects and general plans require elaborate analysis of all impacts: transportation, air quality, water quality, land use, neighborhood character, agricultural land, loss of housing, relocation of people or businesses, biological resources, plant and animal life, noise, climate, shadows.
- d. Alternatives and measures to avoid adverse impacts must be identified and discussed and an explanation given as to why they are not feasible if rejected.
- e. A project may still be approved even if there are significant adverse effects on the environment but in such a case, the agency

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must state the considerations as to why approval is given.

- f. Primary purpose is to require disclosure of impacts and consideration of means to avoid adverse effects through planning and design.
- g. Extensive participation in the evaluation by citizens is required.
- h. This law has probably had more impact on development in California than any other over the past 20 years.

5. Eminent Domain Law

- a. Establishes purposes for which private property may be confiscated.
- b. Establishes procedures for establishing values to be paid, for taking possession and for paying incidental damages.

H. Building and Construction Laws (many laws)

- 1. Requires cities and counties to adopt building regulations which establish minimum standards; set some standards; energy, ADA, seismic, schools, hospitals.
- 2. Requires general building contractors and specialty contractors to obtain state licenses; penalty for performing work without a license includes giving back all money paid for work to the customers.
- 3. Makes home builder liable for defects in construction for 10 years (developer not contractor).
- 4. Grants contractors liens on property on which they worked until paid.

I. Real Property Financing Laws

- 1. Permits lien on property to secure loan.
- 2. Provides special, fast non-judicial procedure for taking property if payment not made.
- 3. Requires 90 days notice and right to cure before foreclosure of lien (court could take 2 years).

4. If choose such method, lender is limited to value of property; cannot collect anything more from the borrower and borrower is excused. As a result lenders look carefully at the property.
 5. This is the most common form of real estate financing. Can pledge any kind of real property (leasehold, fee ownership, easement.)
- J. Special Laws on the Environment.
1. Air quality permits to control emissions.
 2. Water discharge permits.
 3. Water use permit.
- K. Laws Regulating Changes in Local Government Boundaries.
1. Change may be initiated by popular request or by government.
 2. Approval of a regional commission representing cities and the county required.
- L. Laws Establishing Regional Governments
1. To date, composed only of officials from member governments.
 2. Intended to coordinate activities of local governments in same region.
 3. New efforts are being made to create stronger regional governments (for example, in the Los Angeles metropolitan area, there are over 100 cities and 5 counties, each independent).
- V. Local Government Laws (Ordinances, Regulations, Codes)
- A. Building Code or Ordinance
1. Most basic regulations, used for many decades.
 2. Controls techniques and materials of construction to assure health and safety (engineering).
 3. Generally based on uniform codes promulgated by national organizations of building officials.

4. Requires building permit to be obtained before commencing construction based on plans by architect and engineer.
5. Requires inspections throughout construction.
6. Requires certificate of completion or occupancy before occupancy.
7. Permit required also for all alterations, except painting.
8. Not a discretionary permit in theory; if meet the technical written requirements, permit will issue. However, this is the point at which a determination is made as to whether all other necessary approvals have been obtained.

B. Zoning Ordinance (Land Use Regulation)

1. Permanent uses (housing, stores, factories, offices).
2. Permitted density (number of dwelling units per hectares or square meters of land; or number of square meters of building per square meter of land).
3. Building height.
4. Percent of land covered by building or paved surfaces.
5. Amount of landscaping required.
6. Special approvals required for certain kinds of uses and for the arrangement of large developments.
7. Approvals may be by the Planning Commission (a group appointed by the City legislative body or mayor), by the City Legislative Body itself or by the Planning Director or chief zoning official, depending on the importance of the decision.
8. A very popular type of zone and approval in large developments is planned unit development; in this case, a specific plan for development of an entire area is approved, with many details.

9. Often a public hearing must be held to receive citizen comment before approval or disapproval.

C. Subdivision Ordinance

1. Provides for detailed administration of the Subdivision Law.
2. Establishes engineering requirements for infrastructure to be built privately.
3. Imposes fees to reimburse city or county for cost of infrastructure to be supplied by the city (main sewer and water lines, large highway extensions or bridges, new capacity for sewage treatment).
4. Fees are also collected for construction of new schools, parks and recreation facilities, fire and police stations.
5. The plan of subdivision must be consistent with zoning.
6. A subdivision is only necessary if the developer wants someday to sell off parts of the development, such as houses, individual buildings, parcels of land.
7. The subdivision must be arranged so that all requirements will be met for each separate parcel or property interest to be sold; for developments or buildings with shared or common elements, this is often accomplished by having jointly owned property or by a system of mutual reciprocal easements (rights of each owner to make common use of land or space for the same purpose, such as access, parking or recreation).

VI. Federal, State and Local Laws Addressing Special Issues

A. Historic preservation

1. Designation and protection of important landmarks (privately and governmentally owned) from demolition or improper exterior alterations.
2. Designation of historic districts to preserve the character of areas of special values and to ensure that new buildings are stylistically consistent.

B. Natural resource uses of unique areas

1. Mining: controls to avoid adverse environmental effects and provision for future land reclamation or use of rock quarry for recreational lakes when extraction is completed.
2. Timber harvesting: limitations and requirements for replanting.
3. Wetland area protection (primarily regulated by the national government): prevents destruction of marshes or requires replacement.
4. Coastal and lakeshore areas: setbacks required from the water; guarantee of public access for recreation.
5. Protection of endangered species of plants and animals.

C. Water rights

1. System of allocation by permits for use of water from rivers and streams; also based on who first used the water or who owns adjacent land.
2. Requirement that the water be used for a beneficial purpose (agricultural irrigation, industry or domestic use) and not be wasted.
3. Some regulation of well drilling and use of groundwater to protect to protect against overuse of underground water supplies and against land subsidence; there are serious problems in California, especially in areas of agricultural production.

D. Toxic or Hazardous Materials and Wastes

1. Many new federal, state and local laws have been adopted to prevent the dissemination of toxic wastes into the environment (especially on land and into underground waters) and to require the cleanup of existing problems.
2. Every owner of property is made liable for the costs of correcting problems on his property.
3. Persons or enterprises who generate hazardous or toxic wastes from their activities must prevent

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harm to the environment, provide for special disposal at approved facilities and pay all costs for handling, cleaning, recycling and transportation.

E. General Laws Restricting Property Rights or Protecting Against Harm to Others.

1. Law of Negligence: each person is liable to others for careless harm to others or to the property of others; enforced by suit in court for damages.
2. Law of nuisance: use of property which is harmful to others property by reason of excessive noise, light, smoke or fumes may be stopped by suit in court for infraction by private person or government.
3. Law of strict liability: sometimes there is absolute liability for harm to others if property is used for dangerous purposes (manufacture of explosives) or for allowing one's property to enter another's (buildings fall down hill into another's house).

**ПРЕЗЕНТАЦИЯ И СЕМИНАР
ДЛЯ ДОЛЖНОСТНЫХ ЛИЦ
РЕСПУБЛИКИ КАЗАХСТАН:**

- по законам США:
- по недвижимости, развитию жилищного строительства и землепользованию:
- по нормативным актам правительства по частной собственности.

**Семинар подготовлен и проведен
Г-ном Джовом М. Салгером
Консультирующим адвокатом (ИКМА)
по программе жилищного развития и
землепользования, спонсируемой
Агентством по Международному Развитию
совместно с Министерством сельского
Хозяйства и Строительства
Республики Казахстан**

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ЗАКОНЫ США (ШТАТА КАЛИФОРНИЯ), РЕГУЛИРУЮЩИЕ ЗЕМЕЛЬНЫЕ И ЖИЛИЩНЫЕ ВОПРОСЫ

I. Конституционные законы - Взаимоотношения граждан и Правительства

А. Право на частную собственность (включает землю и все, что находится на ней, на поверхности и под землей с некоторыми исключениями (недвижимость) и движимым имуществом (т.е. личной собственностью)

Право пользоваться и исключать других из пользования, право отчуждать (продавать, дарить, завещать).

Б. Не может быть конфисковано Правительством, кроме особых случаев для общественного пользования с компенсацией рыночной стоимости.

В. Подразумевается право владеть и пользоваться собственностью в любых целях. Это право подчинено праву государства ограничивать использование собственности с целью удовлетворения интересов других людей или предотвращения вреда другим.

Владение собственностью не означает специфического пользования ею, оно означает - любое незапрещенное пользование.

Г. На некоторых особых территориях (океаны, пляжи, озера, реки) права пользования более ограничены чем на других территориях, особенно там, где частный владелец получил землю в дар от государства.

Д. Нужно иметь в виду, что с начала образования США земля считалась принадлежащей тому, кто занимал ее, также потому, что некоторые Европейские монархи жаловали права собственности на открытие или поселение. А также потому, что в соответствии с принятыми в стране законами, земля под поселение жаловалась тем, кто уезжал жить на ней.

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Е. Конституция сохраняет полноту власти государства регулировать частную собственность.

II. Федеральные законодательные акты – Законы, принятые Конгрессом США.

А. Установление и регулирование банковской системы.

Б. Финансовая поддержка жилищному строительству

1. Гарантии банковских займов для жилищного строительства и покупки домов.
2. Установленные институты для приобретения надежных банковских ссуд под строительство. Владение или продажа их инвесторам.
3. Фонды на строительство и поддержание домов, находящихся на балансе у муниципалитета и государства, для людей, которые не в состоянии купить частный дом.
4. Фонды на ваучеры для людей с низким уровнем доходов для аренды частного жилья.
5. Фонды для снижения процентных ставок кредитов под строительство домов для людей с низким и средним уровнем доходов.

В. Помощь в развитии общины.

1. Обеспечение фондов городам для покупки и сноса устаревших строений (жилых и служебных), а также возможность после планирования использования зданий в новых целях.

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2. Гранты и займы городам для планирования, специальных проектов и исследований, а также выполнения экономически эффективных проектов в зонах экономического кризиса.

Положения о воздействии окружающей среды, необходимые для проектов Федерального Правительства.

III. Конституция штата (Калифорния)

A. Устанавливает отношения между государственными организациями

1. Закон штата контролирует, за исключением дел чисто местного значения

2. Позволяет муниципалитетам принимать свои решения, пока не приняты противоположные им законы штата, даже если это касается общенационального вопроса.

B. Управление на местах.

1. Предоставляет каждому городу и графству полномочия в управлении с целью обеспечения здоровья, безопасности и нормальной экологической обстановки.

2. Это источник многих местных законов.

3. Местные власти контролируют свои дела и могут повышать свои доходы за счет увеличения налогов и платежей.

B. Регулирует границы.

1. Штат разделен на установленное количество графств. Границы не изменяются.

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2. Города изменяются в количестве и границах.

Г. Также обеспечиваются другие права граждан.

Д. Устанавливает ограничения на налогообложение

IV. Законы штата (например Калифорния или другие штаты)

А. Виды интересов, связанных с недвижимостью.

1. Полная собственность (все, чем можно владеть: неограниченный период, до ядра земли и до неба, без ограничений, за исключением установленных Правительством правил).

2. Ограниченная плата за пользование во время жизни.

3. Аренда: право исключительного пользования, владение землей, домом или частью дома в течение ряда месяцев или лет (от 30 дней до 99 дней).

Соглашение определяет ответственное лицо; чем короче срок, тем меньше ответственность.

4. Аренда по желанию (право занимать помещение до тех пор, пока это позволено, обычно уведомление следует за 30 дней);

аренда еженедельная или ежемесячная;

аренда ферм - год за годом.

5. Юридическое право прохода: право использования части чьей-либо собственности, например: право использовать дорогу на чужой территории, пользование водопроводом, парковкой.

6. Договор ограничения: соглашение с соседом делать или не делать чего-либо на моей собственности. Часто используется в новых

жилых районах с частными зонами отдыха, а также в больших коммерческих центрах, где есть дороги и парковка.

7. Платежи могут делиться: права на полезные ископаемые, права на воздух, права на воду.

Б. Создание интересов:

1. По контракту - наиболее типичный.

2. По закону - подразумевается удобство или аренда ежемесячная без соглашения.

В. Законы регулирующие сделки недвижимостью.

1. Свобода контракта: любой может купить, продать или арендовать.

2. Письменное соглашение на продажу или аренду более чем на один год.

3. Нельзя делить землю для продажи, за исключением специальной процедуры, контролируемой правительством (см. подразделение)

4. Покупателю необходимо знать о проблемах и ~~хороших~~, если он покупает участок для жилого строительства, дом или квартиру на продажу. Нужно знать будущую цену совместных удобств (парковка и т.д. прим. автора).

5. Каждое графство (область) ведет регистрацию актов продажи, но не является ответственным:

каждый покупатель должен знать, что он покупает то, что ему нужно: следовательно, все покупатели получают страховку от частной страховой компании с гарантией покупки, с указанием

ограничений на собственность в соответствии с предыдущими соглашениями и указанием права по закладным.

Страховая компания, обычно, завершает сделку путем принятия денег и юридического акта.

6. Требуется юридический документ. Существует 2 их вида:

а. Юридическая гарантия, гарантирующая, что покупатель получит полную собственность без каких-либо ограничений.

б. Негарантийный юридический документ, означающий простую продажу собственности.

7. Брокеры участвуют в процессе сведения покупателя и продавца.

Они очень важны, особенно при покупке жилья. У брокеров должна быть лицензия (разрешение). Брокер предоставляет много информации покупателю и обязан справедливо вести дела с продавцом и покупателем, помогая им обмениваться предложениями и встречными предложениями для достижения соглашения. Брокер находит покупателя, которого финансирует банк (до 80 % стоимости). Обычно, брокеры получают за работу 5-6% комиссионных и имеют постоянный список, всего, что есть на продажу.

8. Коммерческая собственность и большие сделки с жильем, обычно, не обходятся без участия адвокатов и брокеров

9. Выбор: возможно купить право на приобретение собственности в течение определенного периода времени, возможно, 6 месяцев или 5 лет: соглашение должно быть письменным, и основные его

положения, такие как стоимость и время, должны быть точными и определенными.

Эта практика, обычно, применяется подрядчиками (специалистами по освоению) на землях под новое пользование, когда нужно определить:

-будет ли им разрешено делать то, что они намереваются.

-займет ли много времени подготовка планов и проектов, источники финансирования.

-оценку спроса на продукцию и ее себестоимость.

Никто не пожелает нести расхода до обретения контроля над землей, такой выбор дает контроль.

Обычно, регистрация производится таким образом, что никто больше не может купить землю.

10. Законы о наследстве и дарственных.

Г. Законы, регулирующие отношения домовладельца и арендатора.

1. Основные принципы: домовладелец имеет право сдавать в аренду арендатору помещения и услуги; если арендная плата не выплачивается, арендатор подлежит выселению.

2. Объем, в случаях с нежилыми помещениями все записывается в официальном договоре. Если в договоре не оговаривается предмет ответственности, то ответственным, обычно, является домовладелец.

Обычной практикой является аренда земли на много лет, с тем, чтобы арендатор мог построить здание. Когда сроки аренды большие

арендатор обладает экономическим эквивалентом собственности на землю.

В США - наибольшим сроком является 99 лет; в Англии некоторые сроки аренды достигают 500 лет.

Арендная плата может вноситься сразу, ежемесячно, раз в полгода или ежегодно. Она может быть раз и навсегда утвержденной или утверждаться периодически. В случае долгосрочной аренды, арендатор владеет построенным зданием и может делать с ним, что пожелает, если при этом не наносится ущерб стоимости и качеству земли.

3. Сроки аренды жилых помещений, обычно, более короткие - от недели до нескольких лет. Обычно, домовладельцы несут определенную ответственность по закону. Дом должен быть жилым (т.е. в хорошем состоянии, с нормальными санитарными условиями, санузелом, отоплением, без каких-либо насекомых). Минимальный срок уведомления о выселении, обычно, - 30 дней. Арендная плата вносится ежемесячно.

4. Если домовладелец не обеспечивает надлежащих услуг, арендаторы могут удерживать выплату арендной платы, путем помещения ее в специальный фонд или, в некоторых случаях, делать ремонт своими силами и вычесть стоимость ремонта из арендной платы. Обычно арендаторы не несут ответственности за ремонт или поддержание дома в порядке, за исключением случаев, когда в аренду снимается все здание.

5. Существуют два вида частного жилья, сдаваемого в аренду:

- квартиры в больших домах, принадлежащие и поддерживаемые в порядке одним человеком или юридическим органом;
- дома и квартиры в небольших зданиях, где хозяин занимает одну квартиру.

В последнее время все квартиры в больших домах принадлежат кому-либо - и некоторые из них могут сдаваться в аренду, т.е.

в совладение. В этом случае домом управляет ассоциация домовладельцев или ее контрактер.

6. Выселение: законы, регулирующие процесс выселения. В случае неуплаты арендной платы (самая распространенная причина), арендатору дается уведомление и последний шанс исправить положение. Затем домовладелец обращается в суд с целью выселения.

Порядок восстановления помещений. Домовладельцам зпрещается вселять своими силами и они несут ответственность перед арендатором, если пытаются сделать это.

7. Контроль арендной платы - в некоторых городах, где существует нехватка жилья, городские власти контролируют размер арендной платы. При этом должен быть обеспечен справедливый возарат инвестиций.

В некоторых случаях арендная плата контролируется всегда. В других случаях, только тогда, когда арендатор съезжает. В большинстве случаев контроль обеспечивает ежегодное увеличение, основанное на некоторых показателях.

Д. Законы, регулирующие совместное владение жильем.

1. Нет законов, регулирующих совместное владение нежилых зданий и нежилой земли. Следовательно, это разрешается по соглашению без ограничений.

2. Виды совместного владения:

а. Совместная аренда: каждый владеет неделимым интересом во всей собственности, и в случае смерти одного, вся собственность переходит ко второму совладельцу.

б. Совместная аренда без права на переход собственности в случае смерти к другому совладельцу (каждая часть может перейти любому лицу).

Имущество делится в судебном порядке (т.е. разделение), которое разрешено другими законами.

в. Кооператив: каждый член имеет акции в ассоциации, которая владеет зданием и правом занимать одну или более квартир, обычно для продажи/покупки акций, равной стоимости квартиры, требуется одобрение членов кооператива.

г. Совладение: каждый владелец имеет квартиру (или более одной), а также неделимый интерес в общих землях (которые принадлежат или взяты в аренду) Это более предпочтительно.

д. Развитие, представляющее общий интерес (или развитие спланированного жилья или совладение домом):

Так же как и в случае с совладением, эти слова относятся к владению участками земли в одном районе (в отличие от части здания, когда каждый владелец владеет земельным участком для односемейного жилого дома) В этом случае все владельцы владеют улицами, водой, канализацией, частными зонами отдыха и всей инфраструктурой в зоне освоения. В США земельные участки принадлежат частным лицам. Другие же земельные участки владеются совместно. Тем не менее, все земли могли бы быть сданы в аренду.

3. Законы о совладении или совместном участии в развитии регулируют следующее:

а. Подтверждают жизнённость этой формы собственности и обеспечивают способы составления декларации.

б. Устанавливают формы управления общими элементами, включая юридический статус ассоциации.

в. Обеспечивают распределение обязанностей по поддержанию и право на ассоциацию.

г. Устанавливают правила голосования для ассоциации и метод организации.

д. Обеспечивают достаточную информацию.

е. Требуется урегулирование в тех случаях, когда изменяются границы и количество строений.

ж. Арендатору может быть пожаловано приоритетное право покупки существующего здания.

з. Обязуют всех участвовать в поддержании порядка.

и. Позволяют снимать жилье в аренду кому-либо, продавать или закладывать.

к. Необходимо информировать о вреде другому строению.

л. Запрещают индивидуальное владение или использование общего пространства, кроме случаев, когда это разрешено ассоциацией.

м. Делают хозяина жилья исключительно ответственным за налоги: общие элементы не облагаются налогом.

н. Могут обеспечивать специальное трактование требований для хозяев, при котором необходимо разрешение Правительства на предоставления жилья для потенциального покупателя. Такая информация обычно содержит будущую стоимость и время, когда хозяин уже не будет контролировать ассоциацию, созданную для поддержания в порядке общих элементов.

о. Могут требовать ежегодной оценки и распределения резервных фондов для будущего капитального ремонта (крыши, котлы, дороги).

П. Законы о городском планировании и землепользовании, управлении и окружающей среде.

1. Хотя в этой сфере руководство осуществляется местным правительством, существует несколько важных законов штата. Штат Калифорния был выбран в качестве примера. Здесь имеются хорошо разработанные и передовые законы в этой области.

2. Закон о местном планировании:

а. Обязывает каждый город и графство подготовить генеральный план своей территории, включая специальные элементы землепользования, транспорт, открытые площади и сохранение природных ресурсов, зоны отдыха, развитие жилищного строительства, хозяйственную деятельность человека и др. (шум, сейсмическая безопасность). Генеральный план не имеет прямого влияния на права на частную собственность, но он воздействует на действия правительства. В план включаются цели

предполагаемая плотность, план инфраструктуры и развитие стандартов.

б. Обязывает каждый город и графство принять закон о зонировании, который вместе с генеральным планом прямо управляет землепользованием.

Это наиболее распространенная форма в США. Но она сильно изменилась за последние 80 лет.

Зонирование включает в себя деление всей площади на зоны, в каждой из которых разрешены разные виды деятельности. Обычно, разрешается деятельность без какого-либо специального разрешения (только строительство должно соответствовать закону). Но многие виды деятельности требуют отдельных разрешений

в. Обязывает каждый город и графство иметь комиссию по планированию (от 5 до 9 человек) для подготовки плана и принятия решений по разрешениям на разные виды деятельности.

3. Закон о разделе:

а. Запрещает раздел земельного участка на продажу (или долгосрочную аренду, или финансирование) без согласования с законом и местными правилами.

б. Устанавливает минимальные требования для улиц и другой инфраструктуры, при резервировании земли под парки, школы и другие социальные объекты.

Требуется согласование с планом зонирования и генеральным планом в тех случаях, когда установлены минимальные размеры земельных участков.

в. Основной целью этого закона является управление развитием нового участка земли на краях обжитых районов (строительство односемейных домов и др.).

г. Этот закон все больше исполняется для защиты сельскохозяйственных угодий от раздела на неэкономичные участки с целью продолжения ведения сельского хозяйства, а также для предотвращения, там, где это нежелательно, развития городов. Минимальный размер земельного участка варьируется от 600 м² до 100 га.

д. Каждый город и графство должны принять местные законы (нормативные акты) для исполнения этого закона.

Обязателен обзор и карта с описанием каждого нового созданного участка. Обычно, при делении должны быть представлены финансовые обязательства, гарантирующие установление инфраструктуры, необходимой для защиты местного правительства и будущих владельцев.

е. Ни один участок не может быть продан до тех пор, пока не закончена карта, содержащая информацию об участках и финансовых обязательствах на строительство инфраструктуры.

4. Закон об отчете о воздействии на окружающую среду:

а. Обязывает штат или местные органы сделать оценку влияния на окружающую среду каждого проекта, по которому местные органы должны дать особое разрешение.

б. Очень маленькие проекты, или проекты, имеющие небольшое влияние на окружающую среду, (например, строительство одного дома) не требуют тщательной оценки.

в. Большие проекты и генеральные планы требуют тщательного анализа всего воздействия: транспорт, качество воздуха, воды, землепользования, характер окружающей местности, сельскохозяйственные угодья, участки под строительство жилья, перемещение людей и предприятий, биологические ресурсы, жизнь животных и растений, шум, климат, тень.

г. Необходимо определить альтернативы и меры по избежанию вредного воздействия. В случае их невыполнимости нужно представить объяснение.

д. Проект может получить одобрение, даже если есть значительный вред окружающей среде. Но в этом случае, местные власти должны указать основание своего разрешения.

е. Главной целью является требование раскрытия информации о воздействии на окружающую среду и меры по избежанию вредного воздействия путем планирования и дизайна.

ж. Требуется широкое участие граждан в оценке влияния на окружающую среду.

з. Этот закон, наверное, имел наибольшее значение на развитие в Калифорнии чем какой-либо другой за последние 20 лет.

5. Закон о праве государства на отчуждение собственности (за компенсацию):

а. устанавливает цели, при которых частная собственность может быть конфискована.

б. устанавливает процедуру определения стоимости, которая должна быть уплачена за отчуждение, а также плату за ущерб.

Законы о жилых строениях и строительстве. (Существует много законов).

1. Обязывает города и графства принять нормативные акты по строениям, в которых определяются минимальные стандарты, основные стандарты.

2. Обязывают генеральных и специальных строительных подрядчиков иметь лицензию штата. За отсутствие лицензии при исполнении работы, вся сумма денег, уплаченная за работу, возвращается заказчику.

3. Строители жилья несут ответственность за дефекты в строительстве в течение 10 лет.

4. Подрядчикам предоставляются права по закладным на собственность, на которой они работали до тех пор, пока им не заплатят.

И. НЕДВИЖИМОСТЬ Законы финансирования:

1. Разрешают использовать право по закладным на собственность для гарантии займов.

2. Обеспечивают специальную, быструю не юридическую процедуру изъятия собственности, если платежи не произведем.

3. Обязывают сделать уведомление за 30 дней и предоставить право исправить положение, до того, как будет применен отказ за пропуском срока, права по закладным (в судебном порядке это может занять два года).

4. В случае выбора такого метода, давший займы ограничен стоимостью собственности: он не может собрать большего с заемщика. Заемщик прощается. И как результат, дающие займы становятся более внимательными к собственности.

5. Это одна из наиболее распространенных форм финансирования недвижимости. Можно закладывать любую форму недвижимости (аренда, владение или юридическое право перехода по чужой территории)

К. Специальные законы по окружающей среде.

1. Качество воздуха позволяет контролировать эмиссию.

2. Спуск воды.

3. Использование воды.

Л. Законы, регулирующие изменения в местных границах.

1. Изменение может быть вызвано по инициативе населения или правительства.

2. Требуется одобрение региональной комиссии, представляющей города графства.

М. Законы, устанавливающие региональное правительство

1. На сегодня формируется только из должностных лиц. - членов правительства
2. Призваны координировать деятельность местных правительств в тех же регионах.
3. Новые усилия по созданию более сильных региональных правительств (например, в округе Лос -Анжелес находится более 100 городов и 5 графств, все они независимы).

V. Законы местного правительства (указы, нормативные акты, кодексы).

A. Строительный кодекс содержит:

1. Основные правила, используемые на протяжении многих десятилетий.
2. Технологию контроля строительных материалов для обеспечения здоровья и безопасности.
3. Обычно, основанную на общепринятых кодексах, обнародованных национальными организациями строителей.
4. Необходимость разрешения до начала строительства, основанная на архитектурном и инженерном планах.
5. Необходимость инспекции во время строительства.
6. Нужно разрешение на все изменения, за исключением покраски.
8. В теории не нужно особое разрешение для соответствия письменным техническим характеристикам. Тем не менее, на этой стадии

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определяется целесообразность необходимости получения других разрешений.

Б. Нормативные акты по зонированию (землепользованию).

1. Разрешенное использование (т.е. право строить дома, магазины, фабрики, офисы).
2. Допустимая плотность (количество строений на гектар или кв. метр земли или количество кв. метров дилля на кв. метр земли).
3. Высота строения.
4. Процент земли, под зданиями или заасфальтированная площадь.
5. Необходимое количество пейзажа.
6. Необходимы специальные разрешения для определенных видов пользования и для больших проектов.
7. Разрешения могут быть получены комиссией по планированию (группа, назначаемая городским законодательным органом или мэром) или директором по планированию и зонированию, в зависимости от важности решения.

Очень популярным видом зоны и разрешением на большее строительство является спланированный проект. В этом случае одобряется специфический план со всеми деталями развития всего района.

9. Часто нужны общественные слушания для получения общественного мнения при процессе одобрения или отклонения.

В. Закон о разделении.

1. Обеспечивает детальное регулирование.
2. Устанавливает инженерно-технические нормы инфраструктуры, которая строится частным образом.
3. Налагает платежи на строения в городе или в графстве, для покрытия стоимости инфраструктуры, сооружаемой городскими властями (канализация, дороги, мосты...).
4. Собираются также платежи за строительство новых школ, парков, зон отдыха, полицейских участков, пунктов пожарной охраны.
5. План разделения должен сочетать в себе зонирование.
6. Разделение необходимо тогда, когда владелец хочет, чтобы кто-либо продал дома, участки земли.
7. Разделение должно быть проведено таким образом, чтобы каждый участок земли отвечал требованиям собственности на продажу. В случаях со зданиями с общими элементами собственности существует совместная система пользования, юридическое право прохода по чужой территории (например, парковка или зона отдыха).

VI. Федеральные законы и законы штатов, касающиеся специальных проблем.

A. Охрана исторических памятников.

1. Защита важных объектов (частных и государственных) от уничтожения или неправильного внешнего воздействия.

2. Сохранение исторического характера территории с особой ценностью. Новые дома должны гармонировать со старыми.

Б. Использование природных ресурсов в уникальных зонах.

1. Добыча: контролирует отрицательное воздействие на будущее земли. Использование шахт и каменоломен в качестве прудов и зон отдыха после полного завершения добычи.

2. Рубка леса. Ограничение и требование по посадке деревьев.

3. Защита болот.

4. Береговые зоны морей и озер. Гарантируется доступ общественности к зонам отдыха.

5. Защита вымирающих видов растений и животных.

В. Водное право

1. Система распределения воды, разрешающая использовать воду из рек, зависит также от того, кто первым использовал воду, и кто владеет соседним участком.

2. Требование, чтобы вода использовалась с выгодой (мелиорация для промышленности или домашнего использования) или не тратилась впустую.

3. Правило касающееся бурения колодцев и испытания грунтовых вод с целью предотвращения перерасхода подземных вод и обвалов почв:

Эти проблемы очень серьезны в Калифорнии, особенно в районах сельскохозяйственного производства.

Г. Токсичные или опасные материалы, а также отходы.

1. Было принято много новых федеральных штатных и местных законов с целью предотвращения выброса токсичных отходов в окружающую среду (особенно на землю и подземные воды) и решения ныне существующих проблем.

2. Каждый владелец собственности ответственен за затраты по решению экологических проблем на своем владении.

3. Лица или предприятия являющиеся источниками токсичных или опасных отходов в результате своей деятельности должны предотвращать вред наносимый окружающей среде. Они должны оплатить все расходы по уборке, очистке и транспортировке.

Д. Общие законы, ограничивающие права собственности и защищающие от вреда наносимого другим.

1. Закон о холатном отношении:

каждый человек несет ответственность за вред причиненный другому человеку или собственности другого человека в результате холатности. Закон приводится в действие в результате судебного иска о причиненном ущербе в суде.

2. Закон о нарушении общественного порядка (использование собственности с причинением вреда собственности других)

Это может быть: чрезмерный шум, свет, дым или пары. Этот процесс может быть остановлен юридически путем судебного запрета правительства или частного лица.

3. Закон о строгой ответственности:

иногда предусматривается абсолютная ответственность за причинение вреда остальным, если собственность используется в опасных целях (производство взрывчатых веществ), или за допущения вторжения своей собственности на чужую территорию (здание упало с холма на другое здание).

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January 29, 1993

BY FACSIMILE AND MAIL

Ambassador William Courtney
American Embassy
Ablay Khan Street
Alma Ata
Kazakhstan 48001

Dear Ambassador Courtney:

Thank you for the opportunity to meet with you before my departure from Alma Ata; I found it quite instructive and pleasurable. As you have requested, I enclose some materials which you may find useful in your speech making.

I look forward to my next trip to Alma Ata and seeing you once again.

Best regards,

John M. Sanger / JMS

John M. Sanger

Enclosure

cc: Peter Epstein, ICMA (w/encl.)

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On Shared Experiences Between the United States and Kazakhstan

Like the Republic of Kazakhstan the United States of America has been blessed with a large land area compared to its population. This was particularly true in the 19th century when major development of the country occurred, and particularly during its westward expansion. Naturally there were mistakes made and substantial injury by European settlers to the Native Americans who originally inhabited the land. The history of Kazakhstan has some parallels, with similar gains and losses. The United States did benefit in its economic development from a land policy which involved the government's making available vast land areas for settlement and farming, leading to the development of new urban centers and enormously successful agricultural production. During the middle and later 19th century, parcels of land were made available by lottery and by races to families willing to settle and farm them, to build stores and create industrial enterprises and for other purposes beneficial to the country's development.

Similarly this has happened to some degree in Kazakhstan but today the opportunity exists for substantially greater new opportunities for private initiative and individual effort in the development of the country. Our homesteading acts can perhaps serve as a partial model, adjusted to account for Kazakhstan's declared determination to retain all land ownership in the name of the republic while still making it available for productive use, the development of new enterprises and the satisfaction of individual housing needs. Mechanisms must be found, however, which set free the creative ideas and individual initiatives of a free citizenry. This requires, in our experience, loosening the reigns of government over the control of land, if not its ownership. For example, long-term leaseholds are a practical means of encouraging individual investments.

Fortunately, Kazakhstan can learn from our mistakes, particularly in the areas of ecological protection and urban planning, reserving the best agricultural lands for their true productive potential and seeking the best environmental conditions. Moreover, Kazakhstan is already aware of the potential benefits to the country as a whole from the planned exploitation of its mineral resources. However, it is essential that the past history of excessive governmental controls be shifted in favor of more freedom for individual enterprise within preannounced. Otherwise free markets will not prosper and the country's development needs will not be met. This requires a major change in making available land for use, comparable to that embarked on by the U.S. in past years.

On the Role of Small Enterprises in Housing Construction
and Overall Building

Under Soviet economic policies, virtually all building, including individual houses, has been undertaken by large enterprises with thousands of employees and has involved the use of pre-manufactured building components of relatively large size. This system requires extensive governmental management, substantial capital resources for production of building materials and mobilization of large scale equipments in order to achieve construction. Buildings are large, building components are large, building enterprises are large and capital and labor requirements are large. Understandably, it is difficult to contemplate a different approach but our experience has been quite different and may be useful for you to contemplate.

In the United States as in most other western countries, building enterprises are fairly small, whether measured by the number of employees or available capital. The average building enterprise probably does not employ more than 25 people. Buildings are constructed out of components that are relatively small, each contributing to the whole in accordance with numerous alternative designs that can respond to highly varied circumstances, land plots of varied size and individual desires. This approach is as essential to the dominance of private enterprise in construction as the technologies and systems of organizations used in the Soviet economy are essential to its approach. Thus, if true privatization is to occur in the housing and building industries, it will be necessary to encourage the development of small building enterprises, small building components and small scale construction, from the supply of materials to actual construction. The overall flexibility and lower capital requirements generally seem to be preferable to theoretical economies of scale, particularly where capital is scarce. Such alternatives are particularly important to respond to consumer demand and to involve individuals and small businesses in meeting housing demands.

In most cities in the United States, not only single family homes but also small apartment buildings, are built by very small family enterprises involving few workers, utilizing highly flexible and varied building materials. Overall, this group of enterprises involves a lot of people. Most importantly, the building materials in use vary by region according to local availability. In those parts of the country where wood is readily available, it is the primary building component; in areas where wood is not available, cement block and bricks are more common. Steel and concrete are of course used selectively where they are needed. Generally, while the

labor component in construction is higher, this means that there are more jobs in the construction industry than in a more capital-intensive approach.

In cities like Boston and San Francisco, entire families support themselves through the construction of a few houses or one or two small apartment buildings each year. Wholly within their capacities as producers, this opportunity to respond to a substantial demand enhances flexibility in matching consumers with the products they wish. The result is much greater choice, a wider range of price and opportunities for different forms of tenure. Moreover, some consumers who might not otherwise be available to afford new housing find that they can do so by contributing their own labor to a portion of housing construction. Such an approach necessitates a highly decentralized and disaggregated industry in terms of materials supply and construction.

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January 15, 1993

Report to the U.S. A.I.D. Office in Alma Ata on the activities of John M. Sanger during his visit as a part of A.I.D.'s ICMA Mission for Assistance in Housing and Urban Development to the Republic of Kazakhstan and the City of Alma Ata.

Mr. Sanger, a U.S. lawyer from San Francisco specializing in real estate, environmental and local government law and a city planner, arrived in Alma Ata on January 4. His trip was organized for the primary purpose of collecting and making initial evaluations of the existing legal and institutional structure in Kazakhstan to support the transition to a market-based real estate system. He met soon after his arrival with Paula Feeney, the local A.I.D. officer overseeing housing issues, to obtain an orientation and advice on contacts. He also obtained local interpretative and technical assistance and discussed plans for the visit with Joseph Grassi, ICMA's long-term resident advisor. The balance of the first day was spent in organizing meetings the following day and commencing to read laws collected and translated pending his arrival.

During the next ten days, Mr. Sanger met with a number of officials of the Republic of Kazakhstan and of the City of Alma Ata, as well as prominent jurists, practicing attorneys, residents with actual practical experience under the housing privatization program, and others able to provide useful information for assessment of the problems to be overcome and progress made in conforming laws and institutional structures to forms suitable for a functioning private economy in housing and other real estate. He also arranged for the assembly of existing laws in numerous relevant areas, draft laws under consideration and legal interpretations and arranged for translations into English for evaluation.

At the request of Mr. Dosmagambetov, the Republic's Chief Architect, ICMA's principal client contact, Mr. Sanger also gave comments on proposed draft legislation regarding new housing development for single-family detached homes and for city planning and architectural regulations. He also conducted a three-hour lecture/seminar for employees of the Ministry of Architecture and Construction on real estate law and practice in the U.S. This was attended by about 40 persons and a complete written summary was prepared, translated and made available to those who attended and to other interested parties.

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Mr. Sanger also initiated contact with M. Timkin, the Deputy Minister of the Ministry of State Property (and Privatization), a skilled lawyer, with whom several productive sessions on necessary legislation were held.

Mr. Sanger also met with the former and current director of the Institute on State and Law, two very prominent jurists with specialties in civil law and government structure. At the request of the current director, he gave a seminar for the 30+/- persons staff of the Institute, involving an interchange on differences in U.S. and Kazakhstan law. Mr. Sanger was also invited to dine with the Director, Dr. Nurpeisov, and his former colleague, Dr. Suleimenov, at his home. He did so and Karen Wildess of the ABA's CEELI project joined him there. Dr. Suleimenov is now the Chief Academic Secretary of the Academy of Sciences and a frequent advisor to the government on legislation. The Institute reviews and comments on or drafts much legislation. Assistance was also enlisted from a practicing attorney on assembly of relevant laws.

Members of the Embassy and A.I.D. staff provided continuing and valuable assistance in arranging contacts and providing suggestions. Before his departure, Mr. Sanger briefed Mr. Buck and Ambassador Courtney on the visit and indicated the strong support he found for privatization efforts among those he had met.

The most serious problems encountered appeared to revolve around the uncertainty of how to compromise the opposition of most Kazakhstanis to the privatization of land ownership with the need for security of land tenure for investment purposes. Progress was made in several discussions with regard to the use of long-term leaseholds and clarification of the reliability and durability of traditional hereditary life tenure. These seem promising avenues for future markets in land use. In the last two days of his visit, Mr. Sanger was able to meet with Mr. Svoyak, a deputy in the Supreme Soviet, former member of the Committee on Economic Reform and now Minister for Antimonopoly, Mr. Ahkmenbetov, new Minister for Land Relations and Land Tenure, and Grigori Marchenko, Assistant to the Vice President. All were encouraging regarding the desirability and usefulness of U.S. technical assistance -- and naturally and reasonably steadfast in their loyalty to Kazakhstani principles and realities. All are committed to market reforms.

Mr. Sanger's last meeting was with Grigori Marchenko, Deputy to the Vice President of the Republic. He expressed the Vice President's and his keen interest in assistance in developing and carrying out a housing and real estate development program. He emphasized the need for a housing financing system and laws to support it, the need for both rural

and urban housing construction and the desire to coordinate foreign assistance to make it most efficient. He suggested Mr. Sanger get in touch on his next visit and that Mr. Epstein make contact with the Higher Economic Council (Shukuev) and the new Ministry of Economy (Iztuelov).

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