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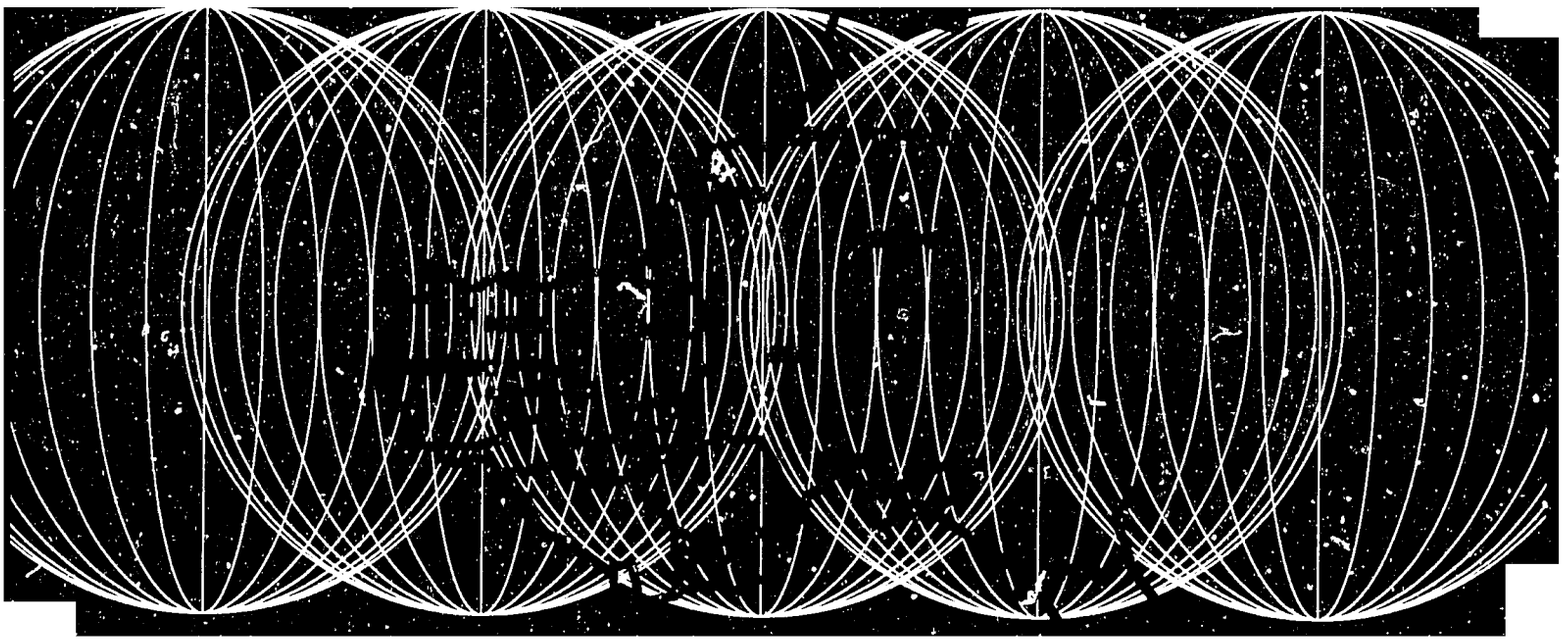
FROM PLANNING TO MARKETS
HOUSING IN EASTERN EUROPE



THE URBAN INSTITUTE
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RESIDENTIAL REAL ESTATE TRANSACTIONS IN THE RUSSIAN FEDERATION

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ABSTRACT

This paper discusses the current legal and procedural framework within which the private sector real estate market is developing in Russia and describes how typical transactions are taking place with particular emphasis on the contracts used to facilitate the transactions. Numerous legal and policy reforms of the past several years have created the environment to make private transactions in residential real estate possible. However, there are still major areas in need of reform to encourage consumer participation in the market, including more certain title assurances, better land titling and registration procedures, a less onerous tax regime, and better consumer education generally in negotiating contracts to buy or sell real estate. While changes in these broad areas will ultimately improve the quality and security of real estate transactions and encourage expansion of the market, shorter term solutions in areas that do not require such broad-based reforms may also be found. One of these areas is reforming the contract forms that parties use to facilitate their transactions.

The Urban Institute, under the auspices of the United States Agency for International Development Housing Sector Reform Project, has been providing technical assistance in the area of housing reform to the Russian Federation since March 1992. The research for this report was conducted to support the ongoing national and local technical assistance projects of the Urban Institute in Russia.

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EXECUTIVE SUMMARY

Government legislative initiatives of the past four years to legalize private property, privatize state housing, encourage private sector involvement in the housing sector, and increased private party access to land for development have all contributed to the emergence of a private market in residential real estate in the Russian Federation. This paper explores the various elements that impact the development and existing structure of the private residential real estate market, with particular emphasis on the contracts used to facilitate transactions. The reader should note that the research for this paper was conducted in the summer and fall of 1994 and reflects the state of affairs at that time. Any changes since that time are not documented in this report.

I: FACTORS AFFECTING THE STRUCTURE OF REAL ESTATE TRANSACTIONS

The structure of real estate transactions is influenced by a host of factors, each influencing the shape of the transaction.

1. Real estate brokers

"Brokers" or "realtors" function in Russia much as they do in the U.S., although they generally perform a broader range of services than a typical U.S. broker. For their services, brokers typically charge between 5 and 7 percent of the sales price of the unit, although fees as high as 10 percent are not unusual. For their fee brokers perform any one or several of a number of services, including: assisting the seller to privatize his unit, advertising the unit for sale, completing a title search on the property, holding money in escrow, and accompanying the parties to the notary and through the title registration process. While it may be

logical and desirable in the current environment for brokerage firms to provide these services, it raises a host of ethical and fiduciary duty concerns. There is clearly potential for fraud and corruption in a number of typical arrangements between broker and client. Brokers should disclose the multiple interests they represent so that clients do not misunderstand whose interests the broker truly represents.

2. Real estate development industry

Like the brokerage industry, the evolution of private development companies is a new phenomenon in Russia where previously the massive state development and construction entities had a monopoly on this activity. Today, even municipalities are increasing reliant on private investments to finance residential construction, private development activity is on the rise. Both public and private developers of single and multi family housing engage in a wide range of developer activities from land acquisition to marketing and sales.

Access to land and financing are two key considerations that affect the scope of a developer's participation in a project. Russian law precludes juridical entities from owning land in fee simple. Developers are limited to lease and long- or short-term use rights to a plot of land in exchange for which they pay for infrastructure (sometimes 100 percent) or give units gratis to the municipality. For many developers the price the cost of land acquisition is simply too high to make the project feasible. Because of the limited availability of construction finance options developers often rely on installment payment schemes, such as the very popular shared participation arrangement, the finance their projects. The

land acquisition and financing issues with which developers must contend are passed on to purchasers in the form of uncertain property rights and financial risks.

3. Notarization

The law requires notarization of documents conveying real estate. In real estate transactions the notary's role is to supervise conveyancing of the property. The notary ensures all of the proper documents are presented at closing, verifies the authenticity and completeness of the documents, ensures that the parties to the transaction fully understand the terms of the contract, witnesses the parties' signatures and archives the documents. The notary is not required to verify the authenticity of the contents of the documents.

In theory, as qualified, objective third parties, notaries provide a valuable check in the transaction process to ensure that all parties to the transaction understand the consequences of their actions and are behaving honestly. However, in discussions with registration bodies in various cities, the author learned that between 15 and 30 percent of all transactions are rejected because of improper documentation, mistakes, incomplete information or like problems with the documentation not caught by the notary. Also, the practice of many brokers to use their own in-house notaries raises questions about the impartiality of notaries and the degree to which parties in a transaction should rely on the objectivity of the notary.

4. *Title search*

The notion of title search or abstract companies does not exist in Russia. Instead, the seller or seller's broker completes a title search requires collection of documents from a variety of agencies located in various parts of the city, each charging a fee for preparation and issuance of the documents. A detailed list of all the documents required for a complete title search is contained in Appendix A. The process of collecting all of the documents for a title search can be quite cumbersome, but ultimately provides a complete search assuming that the information contained in the documents is accurate. Since notaries archive all of the documents presented at closing, once a search has been completed for the first sale of the unit, the notary's records will provide baseline information for updating title searches.

5. *Title registration*

Russian law requires registration of all transaction involving land and other immovable property. Separate registries are maintained for land and structures. The rights to structures are generally registered by the Bureau of Technical Inventory (BTI) although in some cities, notably Moscow, another agency has been designated as the registration agency. Included in BTI records for multifamily residential buildings is a layout for each unit, the government appraised value (inventory cost) and a history of the owners of the unit and any liens on the property. Land transactions are registered with the local branch (komzem) of the federal Russian Federation Land Resources and Use Committee (Rozkomzem). All

land parcels held in private ownership must be registered with the local komzem and the owner issued a certificate of title as proof of ownership.

There are a number of shortcomings of the current registration system that affect parties in a residential real estate transaction. Separate registries for land and structures increases the possibility for mistakes in recordkeeping. The legal implications of title registration are unclear. Guidelines for adjudicating title disputes exist in only the most rudimentary form. Reform of the title registration, most immediately creation of a unified system registration, is currently underway and will hopefully resolve some of these shortcomings within the year.

6. Real estate taxes

There are two taxes associated with sale of residential real estate in Russia: the property tax paid by the purchaser and the income tax paid by the seller after sale of the unit. Owners pay property tax on the land and structure. Seller's pay an income tax on the sales price of the property at the same rate as ordinary income. While property taxes may be low, the income taxes that a seller is required to pay upon sale of a unit are so onerous as to result in a widespread practice of tax evasion among both juridical and natural persons.

It is unknown how much the tax consequences of residential real estate sales have actually dampened activity in the market. Tax evasion is a widespread practice and discussed openly. Nevertheless, government budgets are losing substantial revenue to tax evasion and widespread and tolerated tax evasion is certainly not conducive to a stable economic and legal environment.

II: ANATOMY OF A REAL ESTATE TRANSACTION

This section describes some of the most common "transaction chains" that are found in the cities visited. Anyone familiar with U.S. transactions will find that the Russian process contains many of the basic elements associated with the initial contract, title search, closing procedure and subsequent registration or recordation of property rights.

A. Existing housing

Two types of transactions chains are popular in sales of existing unit. The first is where the seller and buyer execute a sale of a single family dwelling or unit in a multifamily project without the assistance of brokerage services. The second, and increasingly popular scenario, involves a broker who mediates a sale between buyer and seller. The stages in the existing housing transaction chains involving a buyer and seller, and buyer and seller with a broker are summarized in the chart below.

Existing Housing Transaction Chains	
Seller-Buyer	*Seller-Broker-Buyer (broker as intermediary)*
N/A	**Signing of listing agreement**: Seller and broker sign listing agreement specifying parties' rights and responsibilities.
N/A	**Tripartite agreement:** In some locations this agreement is signed between seller, buyer and broker specifying parties' obligations, including fee obligations and some liability of buyer and seller to each other should they decline to close the deal. Buyer pays broker's fee.
Title search: Seller collects all title search documents to prove ownership, absence of mortgages and other liens, and permission to sell from other owners.	**Title search**: Same as seller-buyer transaction, but broker generally does all of the document collection.
Contract drafting: Buyer and/or seller draft document or may hire notary or broker to draft contract. Notary fee is 1% of BTI value, broker fee is higher. Buyer pays fee.	**Contract drafting:** Same as seller-buyer scenario.
Notarization and closing: Required by law. Notary ensures completeness and authenticity of title search documents and makes sure parties are competent to contract. If all documentation is complete notarization may be completed in one day. Time of payment may be prior to, during or after notarization. All parties receive copies of the contract. Buyer pays fee.	**Notarization and closing:** Same as seller-buyer transaction. Additional documents to be presented to notary are any presales contracts signed between seller and buyer. Broker is often present. Payment often happens in broker's office, especially where broker is escrow agent.
Registration: Required by law. Buyer registers structure with BTI (Mosprivatization in Moscow) and land with Land Committee. Buyer must present sales contract and personal passport. Registration time varies from 2 days to 2 weeks, but may be expedited in most locations for an additional fee. Buyer pays fee.	**Registration:** Same as seller-buyer transaction.
Tax and utility records update: Buyer must present notarized sales contract to utility providers to update records. Notary is responsible for sending information to Tax Inspectorate.	**Tax and utility records update:** Same as seller-buyer transaction.
Propiska update: For buyer who intends to reside in the purchase unit, he must update his passport with his current address. Buyer pays fee.	**Propiska update:** Same as seller-buyer transaction.

Newly constructed housing

The stages of transactions involving newly constructed housing have many of the same characteristics as transactions involving existing housing. The essential differences are in the financing schemes and property rights transfers that are part of the former and not involved in the latter. This paper discusses two common scenarios. The first is the **builder-developer (private or public)-buyer** transaction chain. This type of transaction describes the construction and sale of both single and multi-family units. The developer in this scenario finances construction of the project and then sells completed units to purchasers or partially completed units to purchasers who will themselves finish construction.

The second, and by far the most common type of transaction chain for the purchase of newly constructed housing is a **builder-developer (public or private)-investor(buyer)** chain where the purchaser (investor) finances construction according to a presales agreement or a shared participation agreement. The popularity of this type of arrangement is attributable to its unique function as both as a financing and conveyancing mechanism and to the tax avoidance it legally allows the builder or developer upon disposition of the unit to the investor.

New Construction Transaction Chains

Builder-Developer(public or private)-Buyer	*Builder-Developer (public or private)-Investor (Buyer)* - Multi-family project	*Builder-Developer (public or private) Investor (Buyer)* Single family project
Land acquisition and construction: Developer acquires use or lease rights to the land from municipality or entity that has property rights in the land. Payment is made by financing infrastructure or giving units free of charge to the municipality. Financing for construction comes from the developer's own resources or loans. In the case of the municipal developer financing may be from budget sources. At the end of construction, builder or developer is responsible for acquiring occupancy and other permits.	**Land acquisition:** Same as builder-developer-buyer scenario. It is often the case that property rights in the land are possessed by an enterprise or government agency who is land-rich and cash-poor and wants to build housing for its employees.	**Land acquisition:** Developer generally obtains short term use or lease rights or use or lease rights for period of construction from the municipality or agricultural land owner/user.
Drafting of purchase-sales contract: Document may be drafted by developer, notary or broker. Seller may be developer or builder. Because seller does not own land he is not technically selling the land, although sales price reflects value of land. If notary or broker drafts the contract, a fee must be paid. The buyer pays the fee.	**Execution of shared participation agreements:** Main investor (may be the developer) signs shared participation agreements with the first tier of investors. First tier investors sign agreements with lower tiered investors. These agreements are generally not notarized or registered. In some cities, main investor (developer) must get permission from municipality to finance through shared participation agreements. Contract is drafted by the developer and is usually a boilerplate document.	**Execution of presales or construction contract:** This is a pay-as-you-go scheme like the shared participation agreement. The future owner is a purchaser, not an investor; property rights in the structure vest as soon as construction begins. The contract is not notarized or registered.
N/A	**Financing and construction:** Shared participants make payments up the chain to the main investor and construction proceeds. Main investors (developers) attempt to finance construction 100 percent through shared participation financing. Otherwise, they use their own resources or loans. At completion of construction municipality must approve building for occupancy; in some cities this is by executive decree.	**Financing and construction:** Purchaser may provide financing for a completed unit, or just for the foundation of the structure and will completion construction himself. Federal law requires that there be a structure on the unit before a natural person may register property rights in the land.
N/A	**Drafting of transfer of ownership agreement:** Shared participants and entity that is "owner" of the completed unit (main investor, developer or city) draft transfer agreement formally vesting property rights in the unit in the investor. Contract is drafted by the developer and is usually a boilerplate document.	N/A
Notarization and closing: Required by law. Notary ensures seller has property right to sell unit and all building permits are obtained. All parties must be present at notarization. Payment occurs before, during or after notarization. Each party receives a copy of the contract. Buyer pays notarization fee.	**Notarization and closing:** Transfer of ownership agreement is executed like the sales contract in the builder-developer-buyer scenario. Where invested funds did not cover the cost of construction, investor may be required to pay additional sums before transfer agreement is executed.	N/A
Registration: Required by law. Buyer registers structure with BTI (Mosprivatization in Moscow) and land with Land Committee. Buyer must present sales contract and personal passport. Registration time varies from 2 days to 2 weeks, but may be expedited in most locations for an additional fee. Buyer pays notary fee.	**Registration:** Same as builder-developer-investor scenario. In some cities, Moscow in particular, "owner" must provide registration agency with list of all shared participants and unit to which they are entitled.	**Registration:** Owner registers the structure with registration agency. Owner applies for certificate of ownership of land with the local land committee and title to land is registered with land committee. Owner pays fees.
Update tax, utility and propiska records: Buyer must update his passport with his current address and update utility records. Notary notifies Tax Inspectorate. Buyer pays fee	**Update tax and utility records:** Same as builder-developer-investor scenario.	**Update tax, utility and propiska records:** Buyer must provide proof of ownership to all entities. Buyer pays fee.

III: CONTRACTS USED IN REAL ESTATE TRANSACTIONS

This section will discuss three types of contracts used in real estate transactions: the listing agreement between broker and agent, preliminary sales contracts, and final contracts conveying property rights.

Listing agreements

The listing agreement between the broker and client, usually the seller, outlines the obligations of both parties in finding a purchaser for the seller's unit. Like most agreements used in Russian real estate transactions, listing agreements are very brief and tend to contain only the most material contact terms. While Russian listing agreements in use may touch upon each of the essential elements of a listing agreement, due to their brevity most agreements do not provide an adequate contractual basis for the relationship between the broker and client.

Below is a chart summarizing some of the components of the listing agreements in use most in need of improvement and suggestions for modifications:

Listing Agreement

Term	*Current contract language*	*Desirable contract language*
Description of property and interest sold	The description of interest conveyed is limited to the street address of the property, number of square meters and number of rooms.	The property description should include the street address, number of meters and rooms, as well as fixtures, appliances and other movables the seller intends to convey to the buyer at closing. This provision may also state that the interest conveyed in the structure (and land where applicable) is fee simple.
Broker's rights and obligations	• The agreement implies that the broker is not entitled to a commission until a sales contract is signed between the buyer and seller. • The agreement states that broker will "render services" in exchange for a fee. • The agreement states that the broker will act as an escrow agent and hold until closing any earnest money deposited by the buyer. The agreement does not explain who will receive money should seller decide not to go through with deal.	• The agreement should specify what type it is (exclusive right to sell, exclusive or open) to avoid the extreme scenario where the broker does not receive a commission unless he is the procuring cause of the buyer, regardless of the time and resources he expended in searching for a buyer. This is an area for broker-client negotiation and varies from case-to-case. • The agreement should list and describe the services the broker will perform and the fee that will be charged for each service • The agreement should contain a specific provision which states that the broker is acting as the seller's agent in holding the escrow money, and upon buyer's default the escrow money belongs to the seller.
Payment of commission	• Agreement states payment of commission is to be made by specific method of payment within a defined number of days after closing. • Penalty provision for seller's nonpayment of fee is a percentage of sales price aggregated daily up to a cap.	• Agreement should be more specific on how the commission is derived (either as a fixed amount or as a percentage of the BTI or sales price) and state at precisely what point the broker is entitled to a commission. Specifying the type of agreement (exclusive right to sell, exclusive or open) will identify at what point the broker is entitled to a commission. • Broker should be sure the penalty provisions are onerous enough to act as an incentive for payment. It may be wise to declare penalty as a fixed amount rather than a percentage. Broker may get seller to agree that earnest money is held by broker until seller pays fee and broker has the right to take the earnest money in lieu of a fee should seller not pay broker's commission.
Termination of contract	The agreement states that the contract is in effect until both parties complete their obligations.	The agreement should fix an expiration date and provide terms under which the parties have the right to unilaterally or mutually agree to terminate the contract either with or without penalty. If the contract expires and the parties wish to extend the contract that may do so with a written extension attached as an addendum to the original listing agreement.
Dispute resolution	The agreement states that should the parties encounter a conflict they will resort to alternative dispute resolution options (arbitration and negotiation) before seeking redress in court. No specific third party is mentioned as an arbiter or negotiator.	The agreement should maintain the provision that parties will turn to ADR before judicial resolution. However, the contract should be more explicit and include 1) who the third party arbiter or negotiator will be and 2) whether the outcome of the ADR will be binding on both parties or is merely advisory.

Preliminary (presales) contracts

There are two circumstances under which preliminary or presales contracts are used followed by a contract vesting ownership rights in the future owner of a unit. The first is a presales agreement on an existing unit signed between buyer and seller; the seller promises to convey a unit to the buyer at some future date provided certain conditions are met. The second is the shared participation agreement where the investor agrees to finance construction in exchange for a unit at complete of construction.

Summarized in chart form below are the salient features of the presales agreement and shared participation agreement most in need of improvement.

Presales Agreement

Term	*Current Contract Language*	*Desirable Contract Language*
Description of property and interest conveyed	The agreement includes the street address, square meters and number of rooms of the unit, but omits other defining characteristics.	The agreement should include the street address, square meterage and number of rooms in the unit, an also a description of any other characteristics, appliances, and fixtures that the seller intends to convey when he sells the unit.
Statement of marketable title	This provision usually exists in the sales contract, but not in the presales agreement.	The contract should state as a condition to the sale that the seller conveys to the buyer marketable title, e.g. title that is unencumbered by mortgages, liens or other competing interests.
Risk of loss	This provision is typically omitted from the presales agreement.	The contract should state who bears the risk of loss should the unit be destroyed, damaged or condemned during the period from signing of the presales contract to closing.
Breach of contract	The agreement states that the parties agree to resort to negotiation or arbitration before pursuing litigation.	If the parties intend to use a third party negotiator or arbiter this should that party should be named specifically in the contract. Also, where funds are held in escrow the contract may state that they become liquidated damages for the seller should the buyer breach the contract.
References to other laws governing the transaction	The agreement contains boilerplate language that "all other relevant laws" are incorporated into the contract.	References to the contents of the most important laws should be mentioned in particular. The Civil Code provisions on notarization and registration should be expressly mentioned.
Payment terms	The contract contains only the final price that will be paid by the purchaser and the date on which it will be paid.	The contract should contain specific language on form of payment (cash or wire transfer), place of payment, whether money is to be placed in an escrow or paid in installments. Additionally, if closing of the sale is dependent upon the buyer acquiring financing to buy the unit, then specific financing terms (e.g. loan to value ration, interest rate) that are acceptable to the buyer should be included in the contract.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • date and location where sales contract will be signed • list of additional expenses and party responsible for payment • date of effectiveness of the contract • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • copies of agreement to each party

The presales agreement is not widely used in sales of new and existing units. It is the recommendation of this author, however, that more widespread usage of the agreement would add a measure of security and parties' accountability to the transaction since it would create a contractual obligation between the parties before the closing, as is now the practice.

Shared Participation Agreement

Terms	*Existing contract language*	*Desirable contract language*
Parties to the transaction	Subinvestor signs contract with either main investor or higher-tiered investor who has contract with main investor. This leaves the subinvestor vulnerable. Should the higher-tiered investor engage in fraud or misrepresentation the subinvestor has no rights vis-a-vis the main investor.	All higher-tiered investors negotiating agreements with subinvestors may become partners with the main investor. Thus, the main investor will have contract obligations to all subinvestors. A non-contract remedy is for subinvestors to register their shared participation agreement and put all other potential subinvestors on notice.
Description of the property	Description is limited to square meterage and number of bedrooms.	Description should include square meterage and number of bedrooms along with specific unit address along with any other appliances or fixtures that will become the ownership of the investor. Ideally, the developer will provide the investor a variety of floorplan models from which to choose.
Obligations of the parties	Agreement states that the higher-tiered investor will transfer ownership in a unit with certain characteristics upon receipt of a certain amount of money.	• The agreement should additionally state that the higher-tiered investor acknowledges its fiduciary responsibility to ensure that all payments are made to the main investor and used only for construction. • The contract should also obligate the higher-tiered investor to provide the subinvestor proof of payment to the main investor. • The agreement should include provisions on how and when ownership rights will be transferred after completion of construction.
Payment terms	Agreement contains a total investment price, payment schedule, and penalty provisions. Agreement stipulates that the developer has the right to demand additional payment before transferring ownership if inflation or unexpected price increases make cost of unit construction more expensive than original contract amount. the	• Contract should contain a provision referencing a third party indicator source that will be the authority to determine the additional investor payment. • Contract should contain a notice requirement granting the investor a reasonable number of days to come up with the additional payment. • Form of payment and location where payment should be made must be specified. • Any changes to payment schedule must be in writing and attached as an addendum to the agreement.
Penalties for late payment	Grace period is often very short, if one exists at all. Higher-tiered investor reserves the right to reduce the investor's share or cancel the contract with the investor and transfer investor's share. Where the contract is canceled the higher-tiered investor is obligated to return the subinvestor's investment, perhaps minus a nominal administrative fee.	• Out of concern for fairness and practicality (finding another investor may be time-consuming and expensive), harshness of the penalty should be reduced and a longer grace period included. • In the case where the subinvestor's share in reduced for late payment, the subinvestor should have the option of reobtaining that share within a certain amount of time if he can make restitution of his late payments.
Contract breaches and premature termination	• With the higher-tiered investor's permission, the subinvestor has the right to sell or transfer his shares to another subinvestor. • Where the project is canceled the subinvestor is entitled to a return of his full investment multiplied by a coefficient to account for inflation. No penalties are levied against the developer/main investor for delays in delivery.	• The contract should additionally state that the higher-tiered investor cannot unreasonably withhold his consent for the subinvestor to transfer his share. Also, the contract should make clear that when the subinvestor transfers his shares to another, the subinvestor is freed from all legal obligations vis-a-vis the higher-tiered investor. • Given the riskiness of the investment, return of the full investment at current value is fair. However, the developer/main investor should be forced to a pay either a penalty or compensatory damages when the unit is not delivered on the contract-specified date.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • date and location where transfer of ownership document will be signed • list of additional expenses and party responsible for payment • date of effectiveness of the contract • references to other applicable laws • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • notary attestation (if applicable) • copies of agreement to each party

Final Contracts Conveying Property Rights

Purchase-Sales Contract

In the cities the author visited most sales of existing housing are executed with the use of a standard purchase-sales contract not preceded by a presales contract. There is substantial uniformity in the sales contracts used in these cities. The contracts are short, most not exceeding 2 or 3 pages, and contain only the most essential terms. There are numerous provisions of the existing contracts that could be improved upon or added to strengthen the clarity and balance of the contracts. The summary chart below highlights areas of the contract most in need of improvement.

Purchase-Sales Contract		
Term	*Existing Contract Language*	*Desirable Contract Language*
Seller warranties and exclusion	Contract states that seller ensures that title to the unit is unencumbered and there exist no competing interests.	The contract should additionally state that the seller has performed a title search. Given that there is no formal title insurance policy, the results of the title search should be attached as addendum to the sales contract. Any exceptions to seller's warranty of unencumbered title should be noted. If the broker has provided title insurance the terms of the insurance should be included in the contract.
List of additional expenses and parties responsible for payment	Contract states that all additional expenses are paid by (specified party).	The contract should specifically list what those expenses are, their amounts, and which party is responsible for payment.
References to other applicable laws	Contract states "all other relevant laws apply."	The contract should specifically include references to notarization and registration legal requirements. For the sake of consumer education, other laws of most relevance to natural persons should be listed and their salient points summarized.
Dispute resolution provisions	The agreement states that the parties agree to resort to negotiation or arbitration before pursuing litigation.	If the parties intend to use a third party negotiator or arbiter this should that party should be named specifically in the contract.
Date of effectiveness of contract	Contract states either that the document becomes effective after signatures and notarization or upon registration.	The contract should clearly state that ownership rights vest only after registration. This is clear from the 1994 Civil Code.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • testament of seller's proof of ownership • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • notary's attestation • copies of the agreement to each party

Transfer of Ownership Agreement

In a shared participation arrangement the transfer of ownership agreement is the document which officially transfers ownership to the shareholder after completion of construction. Although not technically a purchase-sales contract the contents of the transfer agreement look much like a sales contract. However, given the lack of clarity on property rights associated with the shared participation arrangement, drafters of transfer agreements must pay particular attention to make explicit the rights of the party transferring ownership and the rights assumed by the investor.

Transfer of Ownership Agreement		
Terms	*Existing contract language*	*Desirable contract language*
Owner's right to transfer ownership	Non-existent.	Given the confusion surrounding ownership rights in the shared participation arrangement, the contract should clearly state the party who is transferring ownership possesses the right to do so and provides proof of this right.
Payment terms	Contract states amount that subinvestor has invested in unit.	The contract should also state that all payments have been made and the party transferring ownership will not demand any additional payments. If this is not true and additional payments will be requested, their amount and payment terms should be contained in an addendum to the transfer agreement.
Notarization and registration	Agreements are registered, but not always notarized.	For the parties' own protection the agreement should be notarized. Registration is required by law.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • list of additional expenses and party responsible for payment • date of effectiveness of the contract • references to other applicable laws • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • notary's attestation • copies of the agreement to each party

IV. CONCLUSION

The ability to securely and swiftly transfer real property at low cost is fundamental to the development of a market economy. At the same time, to encourage consumer participation in the market property rights must be secure and contractual relationships must be predictable and equitable. Up to this point

the infrastructure of residential real estate transaction has been adequate to handle the volume of transactions. However, there are a number of characteristics of the system that increase consumer risk and offer the potential for corruption creating an extremely unfavorable economic and legal environment for consumer participation in the private real estate market. Some of those characteristics are:

- *Conflicts of interest between brokers and parties to the transaction.*
- *Lack of title assurances.*
- *Uncertainty in the legal implications of registration.*
- *Onerous tax burdens.*
- *Uncertain property rights in purchaser-financed new construction.*
- *Boilerplate contracts omit or contain inadequate material terms.*
- *Lack of consumer education.*

The appropriate remedial measures for some of these weaknesses in the system are broad-based legislative and policy responses. Some of the other problems with the system will diminish or disappear as the judiciary addresses legal disputes and sets precedent and guidelines for the legal parameters of contract and other legal relationships regarding real estate transactions. However, at the heart of any transaction is the contract. Therefore, the author suggests that real estate professional, legislators and consumers begin to look more critically at the contracts used to facilitate real estate transactions. Several main areas to be addressed:

• A balance should be struck between allowing parties freedom to contract and incorporating enough detail and protections in contracts to provide certainty and security.

• Professional and ethical standards must be developed in the brokerage industry to separate the roles of realtor, title searcher, and escrow agent.

• The government of real estate industry should undertake a campaign to educate consumers regarding their rights and responsibilities in real estate transactions.

INTRODUCTION

A private market in residential real estate is developing rapidly in Russia since the legalization of private property ownership in 1991. Subsequent government legislative and policy initiatives to encourage the market's development removed some of the obstacles that prevented or hindered private sector involvement in the real estate industry. The government's legalization of private property ownership was accompanied by a massive effort to encourage private involvement in the housing sector. Initiatives to privatize state housing and to allocate land to individuals and developers for housing construction increased the number of units available for purchase. Legalization of ownership of more than one unit and relaxed enforcement of the internal passport system that formerly restricted mobility encouraged more widespread participation in the market.

As changes in the economic and legal environment make private real estate transactions possible in cities throughout Russia private development and brokerage industries are emerging to facilitate those transactions. Research conducted in the summer and fall of 1994 shows that there are standard and widely used operating procedures and contract formats employed by developers and brokers that strongly influence the structure of real estate transactions. In addition to the practices of the emerging brokerage and development industries, the procedures and legal documents involved in real estate transactions are also influenced by immature title search and registration practices, new property and tax laws and a lack of mortgage financing.

The procedures and legal documents used to facilitate residential real estate transactions are the subject of this paper. Particular emphasis is placed on the contracts used in these transaction as their contents and structure illustrate some of the broader legal, procedural and financial considerations. Part I of this paper discusses the procedural aspects of residential real estate transactions. It describes how the practices of developers and brokers shape transactions and discusses related issues of title search and registration, notarization and taxation. Part II illustrates how the various procedural elements of a transaction fit together by describing the flow of events in several typical kinds of real estate deals. Part III is a detailed discussion of the primary contract forms used to execute transactions. It dissects and analyzes the provisions used in each contract and provides suggestions for reform. Part IV presents conclusions based on the discussions in Parts I and II and offers suggestions on areas for reform to improve the accessibility, efficiency, and fairness of real estate transactions. The reader should note that the research for this paper was conducted in the summer and fall of 1994 and reflects the state of affairs at that time. Any changes since that time are not documented in this report.

In each of the cities the author visited there is an active market in sales of new and existing housing. The contracts tend to be short, boilerplate documents containing only the most essential provisions, and do not vary considerably among cities. In interviews, numerous brokers and developers stated that disputes requiring judicial resolution, such as contract breaches or defective title searches, are rare. A federal requirement that all real estate sales are subject to

notarial authentication seems to add a consumer protection check into the process.

However, within the apparent simplicity of the transactions exists the potential for problems. The brief, basic contracts that are used to effect unit sales sometimes lack or contain inadequate terms necessary to provide balanced and equitable protections to both parties. The fact that few contract disputes result in judicial resolution may suggest a lack of consumer confidence in the judiciary, a lack of education about consumer rights or the use of non-judicial means of problem resolution. The lack of litigation is not necessarily a testament to the quality of the contract or transaction itself. There are numerous practices within the brokerage industry that raise ethical and fiduciary duty problems. Varying quality in notarial services challenges the assertion that notaries ensure the integrity of the transaction.

The procedures and contracts used in real estate transactions may have been adequate in the past to manage a small volume of simple transactions involving relatively unsophisticated consumers in the real estate market. However, as consumers become more sophisticated, undesirable risks created by the weaknesses in the contracts and procedures could undermine the health and expansion of the market. Undoubtedly, real estate practices should promote simple, rapid transfers of real estate utilizing straightforward contracts and procedures. At the same time, real estate professionals and policymakers must balance this with the need for fairness, predictability and security in real estate transactions. The proper balance may mean more detailed contracts and

consumer protections than currently in use in order to encourage broader consumer participation in the future.

I: FACTORS AFFECTING THE STRUCTURE OF REAL ESTATE TRANSACTIONS

The structure of residential real estate transactions is directly influenced by the practices of the developers, brokers and notaries who facilitate the transactions and by ancillary financing, title search and registration and taxation considerations. This section explores each of those issues separately and describes how they shape the structure of real estate transactions.

1. Real estate brokers

In the Russian Federation, the term "broker" or "realtor" connotes a legal entity whose function in real estate transactions is similar to, but broader than, the function a broker plays in the United States. A broker may be a facilitator of a transaction or party to the transaction.

For their services, brokers typically charge between 5 and 7 percent of the sales price of the unit.[1] The fee is paid by the purchaser either directly or indirectly through the sales price. For their fee brokers perform any one or several of a number of services, including: assisting the seller to privatize his unit, advertising the unit for sale, completing a title search on the property, drafting the sales contract, holding earnest money in escrow until execution of the closing documents, accompanying the parties to the notary and through the title registration process. Some brokers also provide informal "insurance" to the buyer that the title being sold is marketable. As part of this insurance a broker will agree to testify for the buyer in court to the completeness and accuracy of the title

[1]This may be up to 10 percent in some transactions.

search, may actually pay attorney and court fees for the buyer and, in extreme cases, the broker will purchase the unit in dispute from the buyer and will relocate the buyer in another equivalent unit.[2]

Currently there is no training or licensing requirement for brokers although, as juridical entities, they are required to register as business associations.[3] However, in both St. Petersburg and Moscow members of the profession are attempting to institute some professional standards into the industry. In St. Petersburg the Association of Realtors, a private trade organization, has its own training and certification process. This is a service offered by the Association and is not a prerequisite for operating as a realtor in the city. In Moscow, Moscow members of the national Russian Guild of Realtors are attempting to institute a citywide licensing requirement for all brokers who wish to operate legally within Moscow. The Moscow City Council has adopted a resolution calling for the development by January 1, 1995 of procedures to institute this licensing system.

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[2]Although these forms of "insurance" exist they do not appear to be included in any contract signed between client and broker, raising the question of how valuable the insurance really is. Several brokers explained to the author that they occasionally resort to other more informal methods of resolving title disputes. In these cases the broker will confront the party challenging the purchaser's title to the unit and will attempt other methods of resolution to dissuade the challenger from pursuing any action against the purchaser. Although not always legal, these methods may be more effective than some of the legal channels available to parties whose title is challenged.

[3]One of the main concerns of advocates in the brokerage community for licensing and certification requirements is to eliminate the prevalence of illegal brokerage activity. These "illegal brokers" are largely motivated to operate outside the law in order to avoid paying taxes on their activity. The existence of illegal brokers is a substantial problem in many cities where these brokers operate in large numbers. A member of the Russian Guild of Realtors estimates that nationwide there are approximately 1,200 registered legal brokers and 2,500 unofficial brokers operating illegally.

Brokers have come to play a vital role in facilitating real estate transactions, particularly in Moscow and St. Petersburg where the volume of transactions is high and brokering is a lucrative business. In the absence of title search companies and escrow agents brokers fill in the gap by offering these services in addition to traditional brokerage services. While it may be logical and desirable in the current environment for brokerage firms to provide these services, it raises a host of ethical and fiduciary duty concerns. For instance, where the buyer and seller sign a listing agreement the broker becomes the seller's agent. Yet the broker also acts as an escrow agent for the transaction, holding the purchaser's "earnest money" during the executory period before the closing, a function that should be performed by an impartial third party. A similar conflict arises where the broker, as the seller's agent, performs the title search upon which the purchaser relies in closing on the contact. Further ethical complications ensue where the broker's in-house private notary, technically an employee of the broker, who notarizes the transaction. There is clearly potential for fraud and corruption in these arrangements. Brokers should disclose the multiple interests they represent so that clients do not misunderstand whose interests the broker truly represents.

2. Real estate development industry

Like the brokerage industry, the evolution of private development companies is a new phenomenon in Russia. Until recently, under a process known as the "unified customer" the state played the role as investor, developer, and contractor,

with each function being performed by various branches of government.[4] However, as a result of reforms in commercial law, various legislative initiatives encouraging private development activity, and the increasing reliance of municipalities on private investments to finance residential construction, private development activity is on the rise. While the state still acts as the developer in the majority of at least multifamily projects, private development activity currently accounts for varying percentages of new construction in cities throughout Russia.[5]

Among developers, those producing single family units engage in a wider range of activities than multifamily building developers. For example, developers of single family homes typically acquire land for construction, organize construction and financing and often carry out construction using their own workers. The construction of single family homes is a new phenomenon in Russia and the field is open to private developer to a degree not available to developers of multifamily housing who must contend with a host of government procedures and regulations that accompany development of a multifamily project. Developers of multifamily

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[4]In a typical scenario, a state enterprise (called an investor) desiring to build housing for its employees would be granted a land plot by special resolution from the municipality. Another municipal entity (called the customer), acting on behalf of the investor would oversee financing from municipal resources for the project and organize and oversee the construction process. Construction was undertaken by a state construction firm. Upon completion of construction the state remained the owner of the housing and allocated units to employees of the state enterprise. See Olga Kaganova et al., Surveys of Developers in St. Petersburg at iv (1994).

[5]Under the term "developer" are grouped entities engaged in any one or several of the following activities: purchasing a land plot, working out construction design and obtaining permissive documents; organization of financing; organization of construction; carrying out of construction; gaining profits from the project. See Kaganova et al., supra note 4, at v.

projects may also engage in the same activities as developers in single family construction projects, but more commonly the role of developers of multifamily projects involves a narrower range of activities such as organizing the financing and construction of the project.[6]

Access to land and financing are two key considerations that affect the scope of a developer's participation in a project. Russian law precludes juridical entities from owning land in fee simple. Developers are limited to lease and long- or short-term use rights to a plot of land. In exchange for property rights in the land developers pay for the majority of the infrastructure, in some cities 100 percent, or convey units free of charge to the municipality that owns the land. For some developers the cost of land acquisition is simply too high to make the project feasible.

In both single family and multifamily construction use of installment payments for project financing is very common. The reason is that few construction financing options are available to private developers and individuals who wish to build or purchase housing. Where bank financing is available, high inflation forces high interest rates and short amortization periods short in order to keep pace with inflation. For public developers, the volume of state subsidies for new construction that once existed are no longer available. Even public developers

[6]For instance, it is often the case that the plots for housing construction have already been allocated to an enterprise seeking to build housing for its employees or possessed by the city seeking to build municipal housing. The holder of the land plot solicits the services of a developer to help organize financing for the project because the land holder does not possess sufficient financing to complete a project. In this scenario the enterprise or municipality may acquire the services of the developer to organize the financing of the project and sell the units.

must now turn to private sources of financing for new construction. Typical in financing of single family dwellings is for the future owner and developer/builder to execute a construction contract providing the owner will make regular payments and construction proceeds as payment is made. In multifamily projects the structure of the financing arrangement is similar. Developers accumulate financing for a project from "investors" who may be individuals, legal entities (commonly other developers or brokers), or enterprises providing housing to their employees. The investors finance the project through regular installments and then assume ownership of a unit which they financed upon completion of construction. This is referred to as a shared participation agreement and is discussed in detail throughout this paper.

The land acquisition and financing issues with which developers must contend are passed on to purchasers in the form of uncertain property rights and financial risks. In the context of single family construction the property rights issues are more clear. Although developers may only acquire lease and use rights to a plot of land, federal law allows natural persons to own land underneath a dwelling.[7] Therefore, once a structure is built by the developer, the individual homeowner who purchases the structure may easily acquire property rights in the land.[8] In a multifamily structure the rights individual unit owners have to the land

[7]Land Code of the RSFSR art. 20 (1991).

[8]The procedure is established in article 3 of the October 1993 Presidential Decree "On the Regulation of Land Relations and the Development of Agrarian Reform in Russia" and requires that the natural person apply to the local Land Committee (komzem) for certification of ownership.

underneath the building is an area of contention in the law.[9] Likewise, where an individual pays a developer under a "pay as you go" scheme for construction of a single family dwelling, it is clear that the individual has property rights in the structure from the beginning of construction. If the developer goes bankrupt or otherwise fails to complete the building, the individual at least owns that which is already constructed and alone determines what to do with the unfinished structure. In a multifamily building the eventual owners of the units are "investors" in the project and the law is not clear at what point their property rights in the structure vest. This issues is discussed further in section III.

The installment payment arrangements common in both single and multifamily projects present distinct advantages, but also some financial risks. On one hand, this arrangement is beneficial to both purchaser and developer. The purchaser may spread payments out over a period of time and be spared having to come up with cash for the full purchase price up front. For the developer, the monthly payments are not fixed in the presales contract, but change monthly in relation to inflation. On the other hand, construction under this type of payment arrangement may proceed slowly if the developer builds only at the pace he receives installments from the purchaser. Also, since monthly payments are not fixed, purchasers are not able to accurately budget far in advance what a payment may be in a given month.

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[9]Some read the Land Code to convey land ownership to natural person only where the structure is a single family dwelling. Others read the Code more broadly to allow all natural persons who are homeowners to own the land, in some amount proportional to their ownership rights in the building.

For the time being, the lack of clarity regarding property rights in the law and the absence of a widespread housing or construction finance system in Russia ensures that many of the land acquisition and financing problems faced by developers and their clients will continue. In the short term, perhaps the best way to address the risks presented by these problems is in drafting contracts that minimize these risks.

3. Notarization

A new Civil Code passed in December 1994 makes notarization of real estate contracts obligatory where required by law and mutual agreement of the parties.[10] Failure to comply with the notarization requirement renders the transaction invalid.[11] These provisions of the 1994 Civil Code modify Article 239 of the previous Civil Code (in effect when research for this paper was conducted) which required only that sales of real estate involving natural persons be notarized.[12]

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[10]RF Civil Code art. 163 (1994). There are a number of laws related to real estate transaction that require notarization of documents associated with the transaction.

[11]Id. at 165.1. However, the transaction is not invalidated if one of the parties wholly or partially performs the transaction and the other "evaded notarial formalization of the transaction." Id. at 165.2.

[12] The previous Civil Code was enacted in 1964 and never contemplated private real estate transactions, but Article 239 was widely relied upon as authority for requiring that all sales of existing and new housing be notarized by a state-licensed private or public notary. The language of the Civil Code was misleading because it referred only to sales involving individuals. However, given that private legal entities did not exist until 1991 readers attributed a broad interpretation to Article 239 to encompass all sales of real estate involving individuals or legal entities.

The duties and powers of notaries are established in a 1993 law entitled "On Fundamentals of Notary Activities."[13] The 1993 law is particularly significant because it provides that private notaries may establish practices and perform the same functions as public notaries. Notarial activity is monitored by the State Notary Department and Ministry of Justice. The Ministry of Justice registers public and private notaries and requires they meet the same standards for legal education, complete a one year apprenticeship in a state or private notarial office, pass a qualifying examination and receive a license. However, passage of the exam does not guarantee receipt of a license. The number of licensed and practicing notaries is controlled by the State Notary Department and Ministry of Justice.[14] These entities may refuse to license a notary if the number of notaries in a given location is already satisfactory according to Notary Department and Ministry assessments.[15]

In real estate transactions the notary's role is to supervise conveyancing of the property. The notary ensures all of the proper documents are presented at closing, verifies the authenticity and completeness of the documents, ensures that the parties to the transaction fully understand the terms of the contract, witnesses the parties' signatures and archives the documents. The notary is not

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[13]Feb. 11, 1993, RF Vedomosti (1993), No. 10, item 357.

[14]The numbers of public and private notaries have expanded considerably recently in response to increased demand for their services. In St. Petersburg very few public notaries remain, the vast majority are private.

[15] Notaries do reserve the right to challenge in court the decision to refuse issuance of a license. However, according to the authors' information, these types of challenges are rare.

required to verify the authenticity of the contents of the documents. For instance, the notary offers no safeguard for the buyer against a seller who offers fraudulent proof of ownership or a seller who presents a forged letter from a co-owner of the apartment giving permission to sell the unit. However, the notary will refuse to notarize a sale where the documents indicate that there is a party with property interests in the unit who has not provided permission for the seller to sell the unit. Notaries may be held liable for improperly performing their functions. The 1993 Law on Notaries requires that notaries carry liability insurance in case they are sued.

The notary may also draft the sales contract for the parties should the parties desire. Notary fees, for both public and private notaries, are established by federal law. The purchaser generally pays the notary fees. Notarization of the sales contract is 3 percent of the government appraised value of the unit.[16] For drafting the sales contract the notary charges 1 percent of the government appraised value of the unit. These fees are the same for private and public notaries.[17]

Notaries cannot replace the value that both buyer and seller would gain from hiring their own attorney to review documents and ensure the completeness and

[16]This is the Bureau of Technical Inventory cost, a figure derived by taking the cost of construction of the unit in a given year and indexing the figure periodically to account for depreciation and inflation.

[17]These fees are for the standard drafting and notarization of the document. According to 1993 amendments to the State Duty Act notaries, whose fee is considered a duty, may charge additional fees for performing other services associated with the transaction, including certifying contracts for transfer of land (3% of contract amount); for holding money in escrow (3% of escrow amount); and for authenticating copies of other documents (3% of statutory monthly minimum per page).

legality of the transaction. However, as qualified, objective third parties, notaries may provide a valuable check in the transaction process to ensure that all parties to the transaction understand the consequences of their actions and are behaving honestly.

Some of the problems encountered with the notarization requirement are because not all notaries are qualified, objective third parties. In discussions with registration bodies in various cities, the author learned that between 15 and 30 percent of all transactions are rejected. This is because of improper documentation, mistakes, incomplete information or like problems with the documentation not caught by the notary. Brokers generally felt that private notaries provide better quality services than public notaries and operate more rapidly. Although this may be true, while the government controls the number of notaries and the fee which notaries may charge for their services, the growth of the private notary industry will be restricted.[18] Finally, the practice of many brokers to use their own in-house notaries raises questions about the impartiality of notaries and the degree to which parties in a transaction should rely on the objectivity of the notary.

4. Title search

The notion of title search or abstract companies does not exist in Russia. Instead, the process of completing a title search requires collection of documents from a variety of agencies located in various parts of the city, each charging a fee

[18]In St. Petersburg the municipal government refuses to grant leases for office space to private notaries for longer than 1 year at a time.

for preparation and issuance of the documents. The documents that amount to a completed title search consist of proof of a seller's ownership; evidence that the property has not been sold to another or mortgaged; documentation of the government appraised value of the unit; permission to sell from all others with property interests in the unit; and proof that there are no utility payment or tax liens on the property.

A seller may provide a broker with many of the documents required to complete a title search or a seller may hire a broker to complete the search. Where the broker has a formal or informal agreement with the organization issuing the documents necessary for the title search the document collection process may proceed quite rapidly.

The process of collecting all of the documents for a title search can be quite cumbersome, but ultimately provides a complete search assuming that the information contained in the documents is accurate, an assumption that cannot be taken for granted. While the search process might be time-consuming and cumbersome currently, this is likely to change. Since notaries archive all of the documents presented at closing, once a search has been completed for the first sale of the unit, the notary's records will provide baseline information for updating title searches. However, because the truthfulness of the archived information was never verified by the notary, these records cannot be completely relied upon by the public.

Of equal concern to the rapidness with which information can be collected is quality of the information and the marketability of the title which the purchaser

acquires. It is too early to comment on the quality and completeness of current title search procedures or title insurance offered by brokers.[19] The title searches appear to be quite thorough given the quality and quantity of the information available from public and seller's records. However, the title insurance offered by brokers is extremely informal and of limited scope. This author has the impression that most title disputes are resolved by some of the "informal mechanisms" brokers describe and the more traditional types of title insurance offered by brokers are never utilized.

5. Title registration

Russian law requires registration of all transaction involving land and other immovable property.[20] The 1994 Civil Code provides for a unified system of registration administered by the judicial system.[21] As yet no such unified registration exists and separate registries are maintained for land and structures.

The rights to residential structures are generally registered by the Bureau of Technical Inventory (BTI) although in some cities, notably Moscow, another agency has been designated as the registration agency. BTI is an agency of the municipal government which maintains a facilities inventory on all residential, public and commercial buildings within its administrative district. Included in

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[19]In St. Petersburg there is one title insurance company. The company charges 10 percent of the market value of the unit for their services and conducts the same type of title search as brokers. Should a third party mount a successful challenge to the buyer's title, the insurance company will compensate the buyer with either the fair market value of the unit in cash or provide the buyer another unit of equivalent value.

[20]RF Civil Code art. 164 (1994).

[21]RF Civil Code art. 131.1 (1994).

BTI records for multifamily residential buildings is a layout for each unit, the government appraised value (inventory cost) and a history of the owners of the unit and any liens on the property. To register a transaction with BTI the purchaser or purchaser's agent presents the notarized document transferring ownership from one party to another (either by sale, gift, exchange or inheritance).

In Moscow, the Department of Municipal Housing, the agency responsible for handling all unit privatization procedures, also registers real estate transactions. All dispositions of a property are maintained in the same record, beginning with the privatization of the unit. The Department of Municipal Housing has hired a commercial firm, Mosprivatization, to process all privatization applications and registration of secondary transactions. The procedure is actually quite streamlined and provides a very workable alternative to the situation in other cities where privatization records and registration records are maintained separately.

Land transactions are registered with the local branch (komzem) of the federal Russian Federation Land Resources and Use Committee (Rozkomzem). All land parcels held in private ownership must be registered with the local komzem and the owner issued a certificate of title as proof of ownership.

There are a number of shortcomings of the current registration system that affect parties in a residential real estate transaction. The requirement of registering land and structures in different locations means more costly registration fees and increased possibility for mistakes in recordkeeping. Registration laws and procedures are vague, leaving uncertain what is required by

the local registration body and what consumers might expect. There are no clear legal standards on the legal implications of registration leaving consumers uncertain as to how disputes involving priorities of competing property interests will be resolved. Reform of the current system of registration is currently underway in Russia, amidst great debate between the federal ministries responsible for developing the new system. Hopefully, future reforms will address many of the shortcomings of the current system providing more predictability in the process and secure property rights to owners.

6. Real estate taxes

There are two taxes associated with sale of residential real estate in Russia: the property tax paid by the purchaser and the income tax paid by the seller after sale of the unit. There are no transfer taxes on transactions. The federal government reserves the right to establish property and land taxes and generally sets the rates and determines budget allocation of tax revenue to budgets at various levels of government. Property taxes on residences are currently 1% of BTI inventory cost for natural persons. Property tax on land was recently increased but still does not present a significant tax burden to owners. The tax is not based on the value of the land, but is a rate multiplied by the size of the acreage the tax payer possesses. Local governments are given some leverage to differentiate rates within their jurisdiction to account for land value provided that the revenue collected amounts to the same total with or without the differentiated rates.

While property taxes may be low, the income taxes that a seller is required to pay upon sale of a unit are so onerous as to result in a widespread practice of tax evasion among both juridical and natural persons. A discussion of commercial tax law is beyond the scope of this paper. However, it is worth noting that tax evasion is one of the main reasons for the widespread use of the shared participation agreement in financing new construction. Normally, commercial entities pay a corporate tax on profits made from sales of apartments and single family dwellings. The tax is not applicable to investments made in real estate. Therefore, in the shared participation agreement, since the eventual owners of the units are "investors" and not "purchasers" there is no lump sum payment made at sale of the completed unit and thus no profit tax for the developer to pay.

The high income tax natural persons must pay upon sale of an existing unit is also an incentive for tax evasion. For natural persons income derived from the sale of residential real estate is taxed at the same rate as ordinary income.[22] The only provision in the applicable tax law which mitigates the harshness of this tax consequence is a small exemption for income derived from sale of residential real estate that is used toward "new construction or purchase of a residence,

[22] Based on a reading of the applicable laws the tax works as follows. Sellers are given an exemption equal to 500 times the minimum wage. This figure is subtracted from the sales price, leaving the amount to be taxed. On the first 10,000,000R of this amount the seller pays a flat tax of 1,600,000R. Anything in excess of the 10,000,000R is taxed at 30 percent.

apartment, a country home or country residence" or for debt service related to purchase of new or existing housing.[23]

To avoid this tax burden there is a standard practice of underreporting the sales price on the sales contract. Russian law requires that no sale of existing housing may be for less than the BTI inventory cost. Therefore, the BTI inventory cost is listed as the sales price. In reality, the purchaser buys the unit from the seller at the fair market value and pays under the table the difference between the fair market value and the BTI inventory cost. This is such a widely practiced phenomenon apparently condoned by the Tax Inspectorate that all of the real estate professionals the author spoke to discussed it openly.[24] An interesting practice is appearing in some Russian cities for sellers to avoid the income tax burden imposed upon sellers at sale. In Moscow the city has passed a "deprivatization" law allowing owners of privatized flats to turn ownership of their units back over to the municipality, exchange apartments and then reprivatize.[25]

It is unknown how much the tax consequences of residential real estate sales

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[23] Presidential Decree "On Regulation of Certain Issues Concerning Personal Income Taxation," No. 2129, art. 9, December 11, 1993. This exemption amounts to 500 times the monthly minimum wage. As of August 1994 the minimum wage in the Russian Federation was 20,500R.

[24] In the cities where the BTI inventory cost is indexed frequently then the tax savings realized by sellers by using this scheme is not as great as the cities where the BTI inventory cost is substantially lower than the fair market value of the property.

[25] The scenario operates as follows. Assume A wants to acquire ownership of B's apartment. A and B both live in privatized units. A and B legally deprivatize their units and then exchange apartments under a long-established legal procedure for exchanging apartments. If B's unit in this scenario was a privatized apartment then this transaction would be considered a sale and B would pay income tax on the proceeds from the sale. Instead, this transaction is a government-sanctioned exchange. The only expenses to A (the purchaser in reality) and B (the seller) is the processing fee for effecting the exchange and any money that A pays to B under the table.

have actually dampened activity in the market. The market seems to have adapted; the tax evasion procedures described above are discussed openly by real estate professionals and appear to be standard operating procedure in the cities the author visited. Nevertheless, government budgets are losing substantial revenue to tax evasion and widespread and tolerated tax evasion is certainly not conducive to a stable economic and legal environment. It is likely, however, that absent major tax reform at the federal and local level or government crackdown of tax evaders, the tax evasion schemes currently in use in real estate transactions will continue.

II: ANATOMY OF A REAL ESTATE TRANSACTION

The process of conducting residential real estate transactions in Russia is not dissimilar from a like transaction in the United States. Anyone familiar with U.S. transactions will find that the Russian process contains many of the same basic elements of the title search, closing procedure and subsequent registration or recordation of property rights. A summary chart comparing fees associated with a typical closing of an existing unit in the U.S. and Russia is contained in Appendix B.

This section describes some of the most common "transaction chains" that are found in the cities visited. By transaction "chains" the author refers to an identifiable continuum of events that transfers ownership of a residential real estate unit from seller to buyer. This section divides the discussion of real estate transaction chains into those involving sales of existing housing and those involving newly constructed housing. The discussion in this section is limited to transactions where the ultimate party seeking to purchase a residential unit is an individual. The roles of legal entities in residential real estate transactions are addressed only to the degree that they play a role in transactions involving buyers who individuals. A detailed discussion of the contracts described in this section to facilitate transactions is contained in section III.

A. Existing housing

Seller-Buyer

In this transaction seller and buyer execute a sale of a single family dwelling or unit in a multifamily project without the assistance of brokerage services.[26] Transactions of this type are commonplace between natural persons, particularly in smaller cities where the parties prefer to deal directly with one another or the parties wish to avoid the expenses associated with using brokerage services.[27]

This type of transaction proceeds in 5 stages: title search, purchase-sales contract drafting, closing and notarization, title registration, registration with Tax Inspectorate and Militia.

Stage 1: The seller collects all of the documents to complete the title search. The documents the seller will provide the purchaser are proof of the seller's ownership of the unit; evidence that the property has not been sold to another or mortgaged; permission to sell from all others will property interests in the unit; and proof that there are no utility payment or tax liens on the property.

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[26]The transaction described here is a sale. However, another frequent type of transaction between two natural persons is an apartment exchange. Historically used as one of the few options households had to change residences (given the ban on personal property and other mobility restrictions) apartment exchanges still occur frequently for this purpose. Another reason exchanges, rather than sales, are frequently used is to avoid the taxable event that occurs when a unit is sold.

[27]However, it appears to be the case that parties who can afford to do so are turning more and more frequently to brokers to assist them in completing transactions. Given their expertise acquired from the volume of transactions they broker, coupled with the title assurances offered by many brokers, many parties feel that a transaction in which a professional broker is involved provides more security than a transaction executed by the buyer and seller alone.

Stage 2: The buyer and seller may draft the purchase-sales contract themselves. Alternatively, they may hire a broker or notary to draft the contract. If they choose to draft the contract themselves there are a number of "reader-friendly" publications sold in the metro or similar public places which contain purchase-sale contracts with boilerplate provisions.

Stage 3: Closing of the transaction actually takes place in the presence of the notary where all of the title search documents and purchase-sale contract are reviewed. If the notary receives all necessary documents at closing then the notarization process is rapid, one day is not atypical. Completing the closing will take longer if certain documents are missing or inadequate and the parties must take time to acquire new documents. Notaries fees range from a minimum of 3 percent of BTI value for notarizing the sales contract to several times that amount depending upon the services performed by the notary. The buyer pays these fees.

Payment may also occur at closing or at another mutually-agreed upon time by the parties. Amount and method of payment for existing units is a matter for the individual parties to determine and may be effected through a cash payment or bank transfer. It is customary to include the BTI inventory cost as the sales price in the contract for tax considerations, and pay the actual fair market value under the table.

Stage 4: Once the contract is notarized the buyer must register his title to the unit and, where applicable, to the land. The procedures and documents required for registration of the structure differ among cities. Where BTI is the registration agency, sellers generally need to present only the purchase sale contract and their

passport. In other cities, like Moscow where Mosprivatization processes registration, additional documentation may be required.[28] The length of time it takes to register the transaction may vary from several days to several weeks.[29] However, many registration agencies offer the option of paying an additional fee to expedite the registration time and complete the registration within a shorter period.[30] Land registration takes place at the local land committee according to a procedure established by federal law. The buyer pays all fees associated with registration.

Stage 5: After registration, the purchaser must also visit the Tax Inspectorate and local utility provider to be sure that their records reflect the property transfer. Also, for a buyer who intends to occupy the purchased unit internal passport records must be updated at the Militia to change the passport holder's place of residence.

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[28]Mosprivatization requires many of the same documents as notaries require before it will process the registration.

[29]Applications for registration will not be processed if the documentation is incomplete or inaccurate. The percentage of transactions for registration rejected by the registration agency various between cities but is generally between 15 and 20 percent. In Moscow the percentages are higher, between 20 and 30 percent.

[30]The fee for title registration is generally nominal. However, a September 1994 law adopted by the Moscow City Duma levies a hefty registration fee for non-Moscow citizens. The fee is equal to 5,000 times the minimum wage established by federal law. In November 1994 the levy equalled $33,000. The stated purpose of the law is to defray the costs of maintaining the city's infrastructure. Moscow citizens are exempt from the law. All foreign citizens and citizens of former Soviet republics must pay the fee. Russian citizens are required to pay only 10 percent of the fee. See "Taking Moscow Property" Moscow Times, Nov. 20, 1994 at 45.

Seller-Broker-Buyer

Particularly in Moscow and St. Petersburg, brokers are involved in an increasing number of residential real estate transactions, as indicated by the growing number of brokerage firms. In these transactions the broker is either the intermediary between the buyer and seller or the broker is himself a buyer or seller in the deal.

Broker as intermediary. This transaction looks very much like the buyer-seller transaction described above only in this case the broker performs many of the services otherwise handled by the seller. This transaction proceeds in 6 stages: signing of the listing agreement, preliminary contract with buyer and seller, title search, purchase-sales contract drafting, closing and notarization, title registration, registration with Tax Inspectorate and Militia.

Stage 1: A listing or service agreement is signed between the seller and broker setting out the contractual terms of their relationship. The services a broker may offer include: advertising, title search, sales contract drafting, proxy at notarization and proxy at registration. Although in most situations the seller is the broker's client, it is the buyer that pays the broker's fee either directly or indirectly through the sales price.

Stage 2: Some brokers execute tripartite agreements between broker, buyer and seller specifying each party's obligations, including fee obligations and liabilities should the deal fail.

Stage 3: The seller or the broker acting as the seller's agent must collect the same documents as described in the seller-buyer transaction above. For a broker

with standing relationships with BTI, the Tax Inspectorate and other agencies from whom documents are required, this process may proceed quite rapidly provided that there are no liens on the property or individuals with a property interest in the unit who are unwilling to grant permission to sell.

Stage 4: Even where a broker is involved the buyer and seller must both be physically present at the closing. The documents required by the notary are the same as in the buyer-seller transaction with the additional requirement that any presales contracts signed by the buyer and seller be presented.

It is common for the closing to take place in the notary's office and for payment to be made at this time. The broker often acts as an escrow agent for the purchaser. With all of the parties in one location, payment for the notary and broker services can be made along with rendering of the sales price to the seller.

Stages 5 and 6: These stages are identical to the seller-buyer transaction.

Broker as party in the transaction. In addition to mediating transactions, brokers may be parties to a transaction in one of three common scenarios. In the first, the broker purchases the unit from the seller and then sells to the buyer. In some locations this is commonly done because purchasers feel a measure of security in purchasing from a known, established entity rather than from an unknown seller. This transaction chain proceeds much like the seller-buyer transaction chain described in the first scenario. There are minor distinctions in the documentation required by notaries.[31]

[31]Typically the notary will request that the broker produce its charter to demonstrate that it is legally allowed to engage in the purchase and selling of real estate.

Another widespread practice is for a broker to purchase all of the units in a communal apartment,[32] frequently located in desirable areas of large cities, renovate the apartment to create one large unit and then sell the property for a substantial profit. Brokers may also acquire units as an investor-buyer in a shared participation agreement where they feel that the project is a lucrative venture. Upon completion of the project the broker sells, or much less frequently leases, the unit.

The detailed discussion of transactions involving a broker as party to a transaction involves a lengthier discussion of commercial and tax laws. However, awareness of this type of scenario is relevant because it is one method through which individuals may purchase an existing unit.

[32]Oftentimes in this scenario the broker has an interested buyer before the broker begins resettlement of the occupants in the communal apartment. As one St. Petersburg broker described to the author, the deal begins when a contract is negotiated between the buyer and the broker, including an estimate of what the buyer will pay. The broker then locates a communal apartment and negotiates with each occupant to relocate them in a new unit of equal or better condition. According to this broker, the square meter cost of the unit to which the communal apartment occupant is relocated is always cheaper than the square meter cost the broker will be able to charge the purchaser of the communal apartment. Once all of the communal apartment occupants are relocated, the broker rehabilitates the apartment and sells the unit to the buyer. The broker's commission is based on this sales price, a price negotiated up front in the original agreement between the broker and the buyer. If the broker is able to complete the deal for less than the original commission negotiated in the agreement between broker and buyer, the broker retains the surplus funds.

Existing Housing Transaction Chains	
Seller-Buyer	*Seller-Broker-Buyer (broker as intermediary)*
N/A	**Signing of listing agreement**: Seller and broker sign listing agreement specifying parties' rights and responsibilities.
N/A	**Tripartite agreement:** In some locations this agreement is signed between seller, buyer and broker specifying parties' obligations, including fee obligations and some liability of buyer and seller to each other should they decline to close the deal. Buyer pays broker's fee.
Title search: Seller collects all title search documents to prove ownership, absence of mortgages and other liens, and permission to sell from other owners.	**Title search**: Same as seller-buyer transaction, but broker generally does all of the document collection.
Contract drafting: Buyer and/or seller draft document or may hire notary or broker to draft contract. Notary fee is 1% of BTI value, broker fee is higher. Buyer pays fee.	**Contract drafting:** Same as seller-buyer scenario.
Notarization and closing: Required by law. Notary ensures completeness and authenticity of title search documents and makes sure parties are competent to contract. If all documentation is complete notarization may be completed in one day. Time of payment may be prior to, during or after notarization. All parties receive copies of the contract. Buyer pays fee.	**Notarization and closing:** Same as seller-buyer transaction. Additional documents to be presented to notary are any presales contracts signed between seller and buyer. Broker is often present. Payment often happens in broker's office, especially where broker is escrow agent.
Registration: Required by law. Buyer registers structure with BTI (Mosprivatization in Moscow) and land with Land Committee. Buyer must present sales contract and personal passport. Registration time varies from 2 days to 2 weeks, but may be expedited in most locations for an additional fee. Buyer pays fee.	**Registration:** Same as seller-buyer transaction.
Tax and utility records update: Buyer must present notarized sales contract to utility providers to update records. Notary is responsible for sending information to Tax Inspectorate.	**Tax and utility records update:** Same as seller-buyer transaction.
Propiska update: For buyer who intends to reside in the purchase unit, he must update his passport with his current address. Buyer pays fee.	**Propiska update:** Same as seller-buyer transaction.

Newly constructed housing

The stages of transactions involving newly constructed housing have many of the same characteristics as transactions involving existing housing. The essential differences are in the financing schemes and property rights transfers that are part of the former and not involved in the latter.

Builder-Developer (private or public)-Buyer

This type of transaction describes the construction and sale of both single and multi-family units. The developer in this scenario finances construction of the project and then sells completed units to purchasers or partially completed units to purchasers who will themselves finish construction.[33]

This chain proceeds in 5 stages: land acquisition and construction, drafting of a purchase-sales contract, notarization, title registration and registration with Tax Inspectorate and Militia.

Stage 1: A discussion of the complex legal and procedural issues related to acquisition of property rights in land is a discussion beyond the scope of this paper.[34] The essential points to understand are 1) property rights of developers are limited to use and lease rights in the land and 2) there are a several common

[33]Federal law precludes juridical entities from selling their lease or use rights in land, but they may sell structures. In a scenario common in some cities, developers will acquire lease or use rights to a plot of land, provide the infrastructure to the plot and build a foundation for a structure. The plot and structure are then sold to a natural person who completes construction of the dwelling and acquires fee simple ownership rights in the land by applying for a certification of ownership with the local land committee. This scenario is only used in the construction of single family dwellings.

[34]For a detailed discussion see Stephen Butler and Sheila O'Leary, The Urban Institute, The Legal Basis for Land Allocation in the Russian Federation (1994).

avenues through which developers acquire land for construction. As mentioned previously, Russian law does not allow juridical entities to own land in fee simple ownership. Therefore, these entities are limited to short and long term (up to 49 years) lease rights or use rights for the period of construction. The two most common avenues for developers to acquire land are obtaining property rights in the land through an arrangement with the municipal owner or being hired by an entity that already possesses the property rights in a plot of land.[35]

Financing for construction of the project comes from the developer's own resources, loans, or in the case of the municipal developer, budget sources of financing. A developer may contract with a builder to construct the project or, as is commonly the case, the developer uses its own in-house construction firm.[36]

Stage 2: The purchase-sales contract may be drafted by any of the parties to the transaction or by a notary, although it is generally the developer who drafts the contract. Where the developer acquires the land and constructs the building he will be the seller in the contract. Where a developer is hired by an enterprise or other entity to provide more limited developer services, then that enterprise or entity will be the seller. In either case the seller is not technically selling the land, but the structure on the land. However, at least in the case of a single family

[35]An example is where an enterprise is allocated long term use rights in land to construct an apartment building for their employees. The enterprise may hire a developer to organize financing and construction of the building.

[36]Many developers have this in-house capacity because they are former government housing contractors who only recently established themselves as private development companies.

dwelling, the sales price will reflect the value of the land and structure since the owner may subsequently acquire fee simple ownership rights in the land.

Stage 3: The 1994 Civil Code requires notarization of purchase-sales contracts. The documents required by a notary are generally: proof of the developer or builder's property rights in the land; municipal approval of all architectural plans; proof that the building has passed all inspections and is ready for occupancy; a copy of any presales contracts; the BTI technical passport which includes inventory cost; and the charter of the builder or developer corporation as evidence that they are legally permitted to engage in this activity.

Stage 4: After the sales contract is notarized the purchaser must register separately both the structure and the land, in the case of a single family dwelling, with the appropriate registration agencies.

Stage 5: This stage is identical to the seller-buyer transaction described above.

Builder-Developer (public or private)-Investor(Buyer)

By far the most common type of transaction chain for the purchase of newly constructed housing involves purchaser financing of construction according to a presales agreement or a shared participation agreement. Although the structure of these arrangements for single and multi-family projects are quite similar, there are important distinctions that warrant a separate treatment of each.

Multi-Family Projects

The shared participation arrangement is currently the most widely-used transaction chain for newly constructed housing. The popularity of this type of agreement is attributable to its unique function as both as a financing and

conveyancing mechanism and to the tax avoidance it legally allows the builder or developer.

The parties involved in a shared participation agreement may vary slightly but the general structure of the chain remains the same. A main investor (developer) and subinvestors are always parties in the transaction. Where the main investor (developer) is not itself the builder, then the builder is an additional party in the chain. Subinvestors may be the developer, enterprises seeking to provide housing for its employees, brokers or other developers seeking to sell or lease the unit, or individuals. There may be several tiers of investors who at each tier aggregate funds from subinvestors all eventually linked in a pyramid to the main investor (developer) or builder. The first tier of investors in linked to the main investor (developer) or builder and subsequent tiers are linked contractually to the tier just above them, but not to the main investor (developer) or builder.

The elements of a transaction of this type are: land acquisition, execution of a shared participation agreement, financing and construction, drafting of a transfer of ownership agreement, notarization, title registration and registration with the Tax Inspectorate and Militia.

Stage 1: Like the builder-developer-buyer scenario described above land is acquired by the developer obtaining property rights in the land or being hired by an entity with property rights in the land.

Stage 2: The developer or first tier investor typically drafts the shared participation agreement and it is signed with the subinvestor. The agreement creates an obligation for the subinvestor to provide a certain amount of financing

for the project and in exchange the developer will provide the subinvestor a particular size unit of housing when construction is complete. The terms of the shared participation agreement are the same even where the contract is executed between levels of subinvestors. This may leave the subinvestors in a vulnerable position legally vis-a-vis the main investor (developer) should the project fail. In response to the need to provide greater protections to subinvestors, it is the practice of some main investors (developers) to execute shared participation agreements with each subinvestor. Shared participation agreements are not notarized or registered; the applicable Civil Code provisions apply only to sales of real estate, not investments.

Stage 3: It is generally at the sole discretion of main investor (developer) whether to use shared participation agreements as the financing mechanism for a project. Where this mechanism is used main investors (developers) consider it ideal to obtain 100 percent of the financing of a project through these agreements. In some cities, most notably St. Petersburg, a main investor (developer) must obtain written permission from the city executive before financing a project through a shared participation arrangement.

Upon completion of construction a main investor (developer) obtains all of the necessary inspection and occupancy permits before units may be transferred to investors. In many cities an official decree from the city executive is required stating that the building is operational before the main investor (developer) may transfer ownership to investors. In St. Petersburg, not only is this decree required, but a separate executive decree listing all entities who will be allocated

units in the completed project. This second decree also includes the number of units or square meters of housing that the main investor (developer) or builder must give the municipality in exchange for property rights in the land to build the project, a list of all of the investors in the project and the number of square meters to which they are entitled. Requiring these decrees is apparently to guard against main investors (developers) who accept money from more than subinvestor for the same unit or promise units with characteristics different from the unit the main investor (developer) actually intends to convey after construction.

Stage 4: The transfer of ownership agreement officially vests property rights in the unit with the investor. It is questionable whether the investor actually has property rights in the unit before this point, but pending resolution of this legal question it is clear that upon execution of the transfer of ownership document the investor acquires ownership rights in the unit.[37] The transfer of ownership agreement may be executed between the main investor (developer) and subinvestors, or the developer may transfer rights of ownership to subinvestors who then transfer ownership rights to those subinvestors with whom they executed shared participation agreements. In St. Petersburg, the process is

[37]The applicable Law on Investment Activity seems to clearly state that investors receive shared ownership rights in a project during the period of construction and then full ownership rights upon completion of construction and official transfer of ownership rights. RSFSR Law on Investment Activity, art. 7.3 (1991). However, some developers and brokers argue that investors do not acquire any ownership rights in the property until construction is completed, a transfer agreement executed and title registered. The basis for this opinion may be Article 5.5 of the Law on Investment Activity which states that investors receive property rights in the objects of their investment in conformity with Russian Federation law. Russian Federation law terms void any sale of a residence to a natural person that is not registered. The rebuttal to this perspective, however, is that the shared participation arrangement is not a sale.

slightly different. The main investor (developer) prepares a list of all of the investors in the project which is submitted to the municipal Investment Commission. This Commission then issues certificates of ownership to each investor. The certificates are then registered with the appropriate municipal agency.

Stage 5: The transfer of ownership agreement is generally notarized. The documents the notary requests from the builder or developer are: permission to develop the land plot, approval of architectural plans, charter of the corporation to prove that the builder or developer is legally allowed to engage in this type of activity, BTI technical passport (including inventory cost), occupancy permit, the shared participation agreement and, where applicable, relevant executive decrees. From the investor the notary may request proof that all payments have been made.

Stage 6: Once the transfer agreement has been notarized the investor is responsible for registering its title to the unit with the appropriate registration agency. In Moscow, the Department of Municipal Housing requires that upon completion of construction the developer provide the Department a complete list all of investors and information on the size unit to which they are entitled. This list is consulted when investors register their transfer agreements.

Stage 7: This stage are identical to the seller-buyer transaction described above.

Single family

The equivalent transaction chain in the single family context involves the following stages: land acquisition, signing of a presales contract, financing and construction, drafting of a purchase-sale contract, notarization, title registration and registration with the Tax Inspectorate and Militia.

Unlike multi-family projects where developers often organize financing and construction on land to which they have no property rights, in single family projects developers themselves acquire lease or use rights in the land and usually perform the construction. As stated earlier, the cumbersome process that developers must go through to acquire land for multi-family projects is not present in single family projects, making it easier for developers themselves to acquire property rights in the land.

Another key distinction between single and multi-family projects is in the contracts signed between the developer and the purchaser. Rather than a shared participation agreement, the developer and purchaser in a single family dwelling transaction execute a construction contract containing the parties rights and obligations. While its function as an installment financing device is the same as the shared participation agreement there is at least one important difference. Because the purchaser is not an investor, there is no question regarding when the purchaser's property rights vest, at least in the structure. The purchaser has hired the developer to construct a house and the purchaser owns all improvements for which it paid from the moment of construction.

Another element of the multi-family project transaction chain not present in single family projects is the executive decrees required in the multi-family project scenario. However, with the exception of executive decrees, all of the same documents are demanded by the notary at closing. The title registration process in a single family project is also identical to the multi-family project for registering the structure; the owner must also apply to the local land committee in order to receive a certificate of ownership in the land under the structure.

The transaction chains described in this section vary in use from city to city. However, it is true in the cities the author visited that the purchase of existing or construction of new single family units is on the decline as few Russian citizens are able to afford this kind of housing. Financing difficulties also mean that new construction of multi-family projects will rarely be financed through construction financing from banks, but will continue to be financed through shared participation arrangements.

New Construction Transaction Chains

Builder-Developer(public or private)-Buyer	*Builder-Developer (public or private)-Investor (Buyer)* - Multi-family project	*Builder-Developer (public or private)-Investor (Buyer)* Single family project
Land acquisition and construction: Developer acquires use or lease rights to the land from municipality or entity that has property rights in the land. Payment is made by financing infrastructure or giving units free of charge to the municipality. Financing for construction comes from the developer's own resources or loans. In the case of the municipal developer financing may be from budget sources. At the end of construction, builder or developer is responsible for acquiring occupancy and other permits.	**Land acquisition:** Same as builder-developer-buyer scenario. It is often the case that property rights in the land are possessed by an enterprise or government agency who is land-rich and cash-poor and wants to build housing for its employees.	**Land acquisition:** Developer generally obtains short term use or lease rights or use or lease rights for period of construction from the municipality or agricultural land owner/user.
Drafting of purchase-sales contract: Document may be drafted by developer, notary or broker. Seller may be developer or builder. Because seller does not own land he is not technically selling the land, although sales price reflects value of land. If notary or broker drafts the contract, a fee must be paid. The buyer pays the fee.	**Execution of shared participation agreements:** Main investor (may be the developer) signs shared participation agreements with the first tier of investors. First tier investors sign agreements with lower tiered investors. These agreements are generally not notarized or registered. In some cities, main investor (developer) must get permission from municipality to finance through shared participation agreements. Contract is drafted by the developer and is usually a boilerplate document.	**Execution of presales or construction contract:** This is a pay-as-you-go scheme like the shared participation agreement. The future owner is a purchaser, not an investor; property rights in the structure vest as soon as construction begins. The contract is not notarized or registered.
N/A	**Financing and construction:** Shared participants make payments up the chain to the main investor and construction proceeds. Main investors (developers) attempt to finance construction 100 percent through shared participation financing. Otherwise, they use their own resources or loans. At completion of construction municipality must approve building for occupancy; in some cities this is by executive decree.	**Financing and construction:** Purchaser may provide financing for a completed unit, or just for the foundation of the structure and will completion construction himself. Federal law requires that there be a structure on the unit before a natural person may register property rights in the land.
N/A	**Drafting of transfer of ownership agreement:** Shared participants and entity that is "owner" of the completed unit (main investor, developer or city) draft transfer agreement formally vesting property rights in the unit in the investor. Contract is drafted by the developer and is usually a boilerplate document.	N/A
Notarization and closing: Required by law. Notary ensures seller has property right to sell unit and all building permits are obtained. All parties must be present at notarization. Payment occurs before, during or after notarization. Each party receives a copy of the contract. Buyer pays notarization fee.	**Notarization and closing:** Transfer of ownership agreement is executed like the sales contract in the builder-developer-buyer scenario. Where invested funds did not cover the cost of construction, investor may be required to pay additional sums before transfer agreement is executed.	N/A
Registration: Required by law. Buyer registers structure with BTI (Mosprivatization in Moscow) and land with Land Committee. Buyer must present sales contract and personal passport. Registration time varies from 2 days to 2 weeks, but may be expedited in most locations for an additional fee. Buyer pays notary fee.	**Registration:** Same as builder-developer-investor scenario. In some cities, Moscow in particular, "owner" must provide registration agency with list of all shared participants and unit to which they are entitled.	**Registration:** Owner registers the structure with registration agency. Owner applies for certificate of ownership of land with the local land committee and title to land is registered with land committee. Owner pays fees.
Update tax, utility and propiska records: Buyer must update his passport with his current address and update utility records. Notary notifies Tax Inspectorate. Buyer pays fee	**Update tax and utility records:** Same as builder-developer-investor scenario.	**Update tax, utility and propiska records:** Buyer must provide proof of ownership to all entities. Buyer pays fee.

III: CONTRACTS USED IN REAL ESTATE TRANSACTIONS

Previous sections of this paper discussed some of the broad legal and procedural issues that affect the structure of residential real estate transactions. No doubt reform in some of these areas will improve the efficiency and effectiveness of transactions. However, at the heart of any transaction is the contract which determines the legal rights and obligations of the parties. Contracts that are tightly drafted and well-balanced go a long way toward ensuring that a transaction will be completed to the satisfaction of both parties. Even an ideal economic and legal environment cannot compensate for the conflicts parties will likely encounter if their relationship is defined by a poor contract.

Russian contracts used to facilitate residential real estate transactions tend to be brief and simply-worded, but are often missing some material terms. Any modifications to existing contract forms should strive to improve the comprehensiveness and clarity of the format while maintaining the spirit of simplicity and "plain language" that currently characterize Russian real estate contracts.

This section will discuss three types of contracts used in real estate transactions: the listing agreement between broker and agent, preliminary sales contracts, and final contracts conveying property rights.

Listing agreements

The listing agreement between the broker and client, usually the seller, outlines the obligations of both parties in finding a purchaser for the seller's unit.

Like most agreements used in Russian real estate transactions, listing agreements are very brief and tend to contain only the most material contract terms. While Russian listing agreements in use may touch upon each of essential element of a listing agreement, due to their brevity most agreements do not provide an adequate contractual basis for the relationship between the broker and client. Sample listing agreement currently used in St. Petersburg and Novgorod are contained in Appendix C.

Ideally, a listing agreement will be in writing and will contain the following elements:

- **Date**. This provision is important for easy identification and also to fix the time at which the terms of the contract become effective. This term is a standard clause in listing agreements in use.

- **Names of the parties**. For obvious identification and liability reasons the names of the parties should be included in the contract. Also, where the seller holds title to the property in ownership with another party, husband and wife for example, both parties should be listed in the agreement.

- **Description of the property and interest sold**. The description should be sufficient to distinguish it from all other properties. A quite detailed description of the property should be contained in the document conveying the real estate, but for the purposes of the listing agreement a street address will generally be sufficient.

This section should make clear the seller's interest that is being sold, fee simple or something less. In the case where the property being sold includes land

and a structure or an apartment plus a percentage of the common areas (in a condominium, for instance) this should be specified. In addition to the structure or unit itself being sold, if appliances, lighting fixtures, satellite dishes, etc. are being conveyed a list of these features should be specified.

The listing agreements in Appendix C contain provisions that adequately describes the property, generally a street address, but are not sufficiently detailed in describing the interest sold. It is probably understood that the interest conveyed in the apartment or house is a fee simple, but if land, fixtures or other improvements are also be conveyed then their descriptions should be contained in the contract.

- **Statement of broker's rights and obligations**. This provision should describe the services that the broker will provide. The description should be fairly specific, particularly if the broker's commission is in any way tied to the type and volume of services it performs.

This section should also make clear whether the broker has an exclusive right to sell the apartment, i.e. the broker will receive a commission regardless of whether he, the seller, or another broker sells the property, or something less. Other possibilities are that the agreement is open or exclusive. In an opening listing agreement the seller may himself sell the unit or employ other agents to sell the unit. Whoever sells the unit receives the commission. In an exclusive arrangement the seller himself may sell the unit without paying a commission to the broker, but if another agent sells the unit, the seller must pay both the original broker and the one selling the unit.

The listing agreements in Appendix C do not make clear what type they are, leaving it unclear what liability the seller has for the broker's commission should another broker or the seller sell the unit. One of the agreements implies it is an open agreement because it states that "[t]he services undertaken by [broker] shall be considered rendered upon signing of an agreement by seller and buyer." The contract would be better, and the chance of future conflict lessened, if this was made explicit in the agreement. The language as it stands is quite beneficial to the seller, but the broker who expends considerable money and energy in finding a purchaser is left completely uncompensated until a transaction between seller and purchaser is closed. Brokers might want to consider drafting agreements that modify this "no closing-no commission" language. Under the terms of the present listing agreement it is entirely acceptable for a seller to reject out of hand any number of potential purchasers that the broker finds with no liability to the broker. In the worst case scenario for the broker, after rejecting the broker's candidates, the seller may sell the unit himself or through another agent, leaving the broker with no commission and no recourse to obtain one. This problem is correctable through the use of an exclusive or exclusive right to sell listing agreement.

In conversations with brokers in Moscow and St. Petersburg the author learned that brokers do sometimes include language in the listing agreement that provides brokers an exclusive right to sell for all or some period of the listing agreement. However, where sellers do not voluntarily comply with these

provisions the process of taking the seller to court is too expensive and the result too uncertain to make pursuing litigation a realistic option.

If the broker performs the function of an escrow agent, holding the purchaser's earnest money, this situation should be addressed in this provision of the listing agreement. Where a broker holds money in escrow for a purchaser the broker is acting as the purchaser's agent. The listing agreement should make explicit this fact and detail the services that the broker will perform for each party. Without clear distinctions of whose interests the broker represents there may be a conflicts that arise regarding distribution of the earnest money should the purchaser breach. It may be argued that a seller who explicitly allows the broker to hold money in escrow for him assumes the risk of loss should the purchaser breach and will therefore not necessarily be entitled to receive the deposit should the purchaser default.

In the agreements contained in Appendix C the provisions of the contract that describe the broker's duties and conditions under which the commission will be paid are quite vague. The agreements obliquely state that the broker will render services without specifying what those services will be. Given the wide range of services that Russian brokers typically provide, this provision should be modified with a concrete list of services the client can expect to receive and their cost. Also, because brokers fees are dependent upon services rendered, knowing what those services are is crucial in determining the broker's commission. The listing agreement is also an employment contract and the seller has hired the brokers services. The seller is entitled to know exactly what he is receiving for his money.

One of the agreements in Appendix C states that the broker bears no responsibility for the agreement between buyer and seller. A broker who obtains a purchaser through fraud, misrepresentation or other like means cannot absolve himself from liability to the party who is harmed by the broker's dishonest actions. A seller may want to demand clarification of this term in the listing agreement.

- **Payment of commission.** This provision should state how the broker's commission is derived, whether as a fixed amount or as a percentage or the actual sales price. It should also include the conditions under which the commission will be paid, i.e. when a purchaser financially prepared to buy the unit is found, when a contract is signed or when the deal is actually closed.

The listing agreement in Appendix C is specific in requiring the time of payment of the brokers commission (a defined number of days after the signing of the sales agreement) and the method of payment (wire transfer or bank account). It is important that a time for payment of the commission be specified in the contract, particularly if it is to be made at a time other than closing. If a contract omits this provision and states that a broker is due its commission when the buyer and seller sign their contract, then it seems reasonable that a broker should be able to demand payment at the time the contract is signed. Additionally, form of payment and, where applicable, a schedule of payments should also be contained in the agreement. It may also be appropriate to include an address where payments may be made or bank account number where transfers may be wired.

One of the sample agreements contains a penalty provision for non-payment of the broker's fee that is legal and not particularly excessive, but may be addressed in a more direct way. The provision states that where a seller is delinquent in paying a broker's commission the broker may charge a daily penalty equal to 1 percent of the commission that may aggregate over time to an amount not to exceed 8 percent of the sales price. In Russia's inflationary environment these percentages do not appear extreme and over a period of time may not amount to a significant sum. This possibility, in addition to the hassle of pursuing litigation to recover the penalty, is a disadvantage to the broker. A better answer may be to include in the listing agreement that the broker is entitled to subtract its commission from the earnest money the purchaser deposited with the broker before the remainder is given to the seller.

- **Price term**. The listing agreements seen by the author typically omit any reference to the seller's minimum sales price. Including the seller's asking price in the listing agreement is not advised because it may be a disincentive to a broker to find a purchaser at a higher price. It is understood that the seller need execute a sales contract only with a purchaser willing to pay a price acceptable to the seller.

While omitting a specific price term, the listing agreement might contain payment terms acceptable to the seller, i.e. how much the purchaser must pay in earnest money, what percentage of the sales price must be paid at closing, payments after closing and any other relevant terms. The seller wants to ensure

that the broker is seeking a purchaser with the financial ability to pay under terms acceptable to the seller.

- **Termination of contract**. A term which fixes the expiration date of the listing agreement is beneficial to both broker and seller. Interpreted in connection with the type of listing agreement (open, exclusive, exclusive right to sell) an expiration date fixes the time period within which the broker is entitled to a commission should the unit sell. A fixed period also works to the benefit of the seller for the same reason and is additionally desirable because it allows a seller unsatisfied with a broker's services to discontinue using the broker's services after the contractual period is expired. The end date of the agreement may of course be extended if both parties agree; the extension should be in writing.

One of the agreements in Appendix C lacks an express expiration date; the other contains a termination date. The agreement without this term states that the agreement is in effect until both parties complete their obligations. This may be disadvantageous to both parties. It is better to define an expiration date and then executive extension agreements if the parties wish to maintain their relationship.

Parties also generally have the right to mutually rescind the contract and come to some agreement on how to settle accounts. Any unilateral breach or termination of the contract may result in the breaching party being forced to pay damages and endure the long process of litigation. Any provisions regarding parties' rights to mutually or unilaterally cancel the contract should contain some

notice period so that the other party does not continue to perform after one party has terminated the contract.

The practice of one large brokerage firm in Moscow is to include in the contract that should the broker "refuse to buy the unit" or the seller "refuse to sell" the unit then either party has the right to unilaterally terminate the contract. Perhaps once the law develops there will be general custom and usage standards on what due diligence is required of a broker to make a good faith effort to sell the unit and under what conditions it is unreasonable for the seller to refuse to sell. However, without further clarification, these broad terms in the listing agreement create the possibility that parties may legally terminate the contract without good cause.

- **Application of other relevant laws.** It is a common feature of the listing agreements in use and related real estate contracts to contain a general clause which basically states that all relevant laws are incorporated into the agreement. To a certain degree in Russia it makes sense to keep this language vague because laws are constantly changing, new laws are promulgated and there is a certain hazard in trying to include in a contract an exclusive, enumerated list of all applicable laws. At the same time, there may be certain laws that are so important as to warrant specific mention in the contract. Contract drafters should consider whether to enumerate the most essential laws that apply and then include a more general statement to the effect that all other relevant laws are assumed incorporated into the agreement.

- **Other conditional clauses.** If there are other conditions that the seller or broker wants contained in their agreement it is best to make them explicit and

put them in the listing agreement. These conditions might include payment of court costs should a dispute result in litigation, specific methods the broker will use to advertise the unit, when the unit will be shown, liability for parties' contract breaches, etc.

- **Dispute resolution**. If the parties intend to resort to alternative dispute resolution before seeking redress in court, then this should be specified in the contract. Such a provision often appears in listing agreements and states that the parties will first attempt arbitration or negotiation in the event of dispute; should these attempts to solve the problem fail the parties agree to submit their dispute to judicial resolution. Generally, no specific third party is identified who will serve as the arbiter or negotiator. Identifying a third party in the contract now will save the parties from one more point of disagreement when a conflict arises that they are unable to resolve between themselves.

Drafting a listing agreement that contains all of the above provisions may not be realistic at this point in Russia as the market and broker-client relations are only just developing. Sellers may not feel themselves in a position to negotiate certain terms such as the brokerage fee or type of listing agreement. However, certain modifications may be made to the current listing agreements in use in Russia that provide more balanced contractual relationships between the broker and client. The author encountered several brokers in Moscow who utilize rather sophisticated listing agreements containing many of the elements described above. The contracts are lengthy and detailed compared to the listing agreements used by most other brokers. At the same time, the brokers felt that the specificity

contained in the agreements was something desirable for both client and broker because of the security and clarity it lends the broker-client relationship. It may be no coincidence that one of these brokerage firms is among the largest and most successful in Moscow.

Listing Agreement

Term	*Current contract language*	*Desirable contract language*
Description of property and interest sold	The description of interest conveyed is limited to the street address of the property, number of square meters and number of rooms.	The property description should include the street address, number of meters and rooms, as well as fixtures, appliances and other movables the seller intends to convey to the buyer at closing. This provision may also state that the interest conveyed in the structure (and land where applicable) is fee simple.
Broker's rights and obligations	• The agreement implies that the broker is not entitled to a commission until a sales contract is signed between the buyer and seller. • The agreement states that broker will "render services" in exchange for a fee. • The agreement states that the broker will act as an escrow agent and hold until closing any earnest money deposited by the buyer. The agreement does not explain who will receive money should seller decide not to go through with deal.	• The agreement should specify what type it is (exclusive right to sell, exclusive or open) to avoid the extreme scenario where the broker does not receive a commission unless he is the procuring cause of the buyer, regardless of the time and resources he expended in searching for a buyer. This is an area for broker-client negotiation and varies from case-to-case. • The agreement should list and describe the services the broker will perform and the fee that will be charged for each service. • The agreement should contain a specific provision which states that the broker is acting as the seller's agent in holding the escrow money, and upon buyer's default the escrow money belongs to the seller.
Payment of commission	• Agreement states payment of commission is to be made by specific method of payment within a defined number of days after closing. • Penalty provision for seller's nonpayment of fee is a percentage of sales price aggregated daily up to a cap.	• Agreement should be more specific on how the commission is derived (either as a fixed amount or as a percentage of the BTI or sales price) and state at precisely what point the broker is entitled to a commission. Specifying the type of agreement (exclusive right to sell, exclusive or open) will identify at what point the broker is entitled to a commission. • Broker should be sure the penalty provisions are onerous enough to act as an incentive for payment. It may be wise to declare penalty as a fixed amount rather than a percentage. Broker may get seller to agree that earnest money is held by broker until seller pays fee and broker has the right to take the earnest money in lieu of a fee should seller not pay broker's commission.
Termination of contract	The agreement states that the contract is in effect until both parties complete their obligations.	The agreement should fix an expiration date and provide terms under which the parties have the right to unilaterally or mutually agree to terminate the contract either with or without penalty. If the contract expires and the parties wish to extend the contract that may do so with a written extension attached as an addendum to the original listing agreement.
Dispute resolution	The agreement states that should the parties encounter a conflict they will resort to alternative dispute resolution options (arbitration and negotiation) before seeking redress in court. No specific third party is mentioned as an arbiter or negotiator.	The agreement should maintain the provision that parties will turn to ADR before judicial resolution. However, the contract should be more explicit and include 1) who the third party arbiter or negotiator will be and 2) whether the outcome of the ADR will be binding on both parties or is merely advisory.

Preliminary (presales) contracts

There are two circumstances under which preliminary or presales contracts are used followed by a contract vesting ownership rights in the future owner of a unit. The first is a presales agreement on an existing unit signed between buyer and seller; the seller promises to convey a unit to the buyer at some future date provided certain conditions are met. The second is the shared participation agreement where the investor agrees to finance construction in exchange for a unit at complete of construction.

By far the most common type of preliminary contract is the shared participation agreement. Presales agreements for existing housing do not appear to be widely used in Russia. Perhaps because of the short executory period which characterizes real estate deals parties rely on an oral promise to sell and then go to closing within a relatively short period of time after the oral contract is made.

Presales agreement

The purpose of the presales agreement is to create a promise in the seller to convey ownership of a unit to the buyer provided certain conditions are fulfilled. Ideally, a presales agreement will contain the following terms.[38]

- **Date.** Inclusion of a date is important because it generally fixes the date on which the contract is enforceable. Most Russian contracts expressly state that the contract is effective from the date of execution. The date and the city where the transaction takes place are uniformly included in Russian presales contracts.

[38]For purposes of discussion, the presales agreement assumed here is for sale of an existing apartment.

• **Complete names of the parties to the transaction and passport numbers.** Correct forms of this information will be necessary in completing the title search, in the closing documents and later for registering with the title registration agency. All parties who are selling and acquiring ownership rights in the unit should be listed as "buyer" and "seller," respectively. Also, if either of the parties has an agent who will be acting on his behalf, this information and the name of the agent should be included here.

In the sample Russian presales agreement this is generally not a problematic provision; the names of both parties are included along with their current addresses. Although the addresses are probably not necessary, unless the transaction is taking place in a city that vigorously enforces the internal passport system, they provide additional identifying information that may be useful in future title searches. This provision should include the name of both spouses. However, Russian law provides that where a unit is acquired in ownership by one spouse the other automatically acquires a equal ownership rights in the unit. This law will likely apply even where the contract omits one spouse's name.

• **Description of the property and interest being conveyed.** The description should include a street address of the unit, total number of square meters and number of rooms. This is particularly important if only part of an apartment is being or the unit is in a communal flat. The description should be sufficiently detailed to distinguish it from all other properties. The description should also contain a list of other appliances, fixtures, wallcoverings, etc. that the purchaser will acquire ownership of in the sale. Omitting this detail frequently causes

conflicts later in the transaction that can be avoided by addressing the issue in the presales contract.

In Russian presales contracts often this provision includes only the address of the property, the number of rooms and total square meters. A more detailed description of the characteristics or contents of the unit that will be conveyed to the purchaser upon sale is necessary.

- **Statement that the owner possesses the title which he purports to convey.** This provision states that the person conveying title owns the interest he purports to convey and will provide the purchaser with proof of ownership. Although the title records may also provide this information, given the rudimentary state of Russian title records this provision is an added protection for the purchaser.

- **Statement that the seller will convey marketable title to the buyer.** The contract should state that the seller will convey a title unencumbered by mortgages, other liens or competing interests and will provide proof with the results of a title search. While this provision is always contained in the final sales contract used in Russian transactions, it is not provided in presales contracts. The benefit to including this provision in the presales contract is because it implicitly creates an obligation in the seller to perform a title search.

- **List of conditions to be fulfilled be each party.** Any conditions that must be fulfilled before or after execution of the closing documents should be contained in the presales agreement. Some of these conditions may be: collection of the documents necessary for completion of the title search, financing, notarization of

the presales agreement. Where expenses are associated with fulfilling any condition it should be explicit in the contract who will pay the expense.

- **Payment terms.** This section should include the price that the parties agreed to and the terms under which payment will be made, including how much will be paid in escrow deposit, downpayment and payments subsequent to closing. If the buyer must acquire financing before executing the sale, then a "subject to financing" clause should be included here with relatively detailed provisions on the terms of financing that will be acceptable to both buyer and seller, for example the loan to value ratio and acceptable interest rate.

Contracts often contain only the final price that will be paid the purchaser and date on which it will be paid. If the purchaser intends to place earnest money in an account or make installment payments this should be included in the contract including the dates on which payment will be made.

- **Risk of loss provisions.** The contract should make explicit which party assumes the risk of loss should the property suffer destruction, damage or condemnation during the period from signing of the presales contract to closing.

- **Deadline for fulfillment of all terms of the presales agreement.** The parties should specify a mutually agreed upon date when all conditions precedent must be met and location where closing on the unit will take place.

- **Breach of contract provisions.** Where one the parties breaches the contract it is quite likely that resolution of the dispute will come about through a legal process. However, the parties may include terms in the contract requiring resort to arbitration or negotiation before pursuing litigation. Also, the parties

may agree that under certain circumstances the deposit made by the purchaser will be considered liquidated damages should the purchaser breach in which case the seller may keep the deposit in satisfaction of all or partial damages.

Most common in contracts in use is a clause which states that all disputes concerning the present contract will be resolved by negotiation or arbitration. It is common that no reference to a specific party as negotiator or arbiter is made. To avoid future conflicts the third party negotiator or arbiter should be named and the parties should agree with the results of the negotiation or arbitration are binding or advisory.

• **Reference to other laws governing the transaction.** Parties may include in the contract boilerplate language that all other applicable laws governing contracts are incorporated into the preliminary agreement. It may simply be impractical and defeat the purpose of using "plain language" contracts to include a list of all the relevant laws and provisions that apply. However, some of the most important ones, particularly provisions of the Civil Code applicable to notarization and registration that should be expressly mentioned.

• **Parties signatures and date.** Ideally, the parties will sign in the same place at the same time. If this is not possible, the parties may find it in their best interest to require a notarized signature from the other party.

The presales contracts described above are not commonly used in sales of existing housing. However, without a preliminary contractual agreement between the parties, waiting until closing to establish the legal relationship between buyer and seller leaves both parties vulnerable that they will expend time, effort and

inconvenience in preparing for the closing only to have the entire deal fall through at the last minute with no recourse. Likewise, the broker who must wait until closing to receive its commission is left in a position uncertain about whether he will receive his commission or the seller will find another buyer. It is highly recommended that more widespread use of either the tripartite agreement or presales agreement in sales of existing housing be used.

Presales Agreement

Term	*Current Contract Language*	*Desirable Contract Language*
Description of property and interest conveyed	The agreement includes the street address, square meters and number of rooms of the unit, but omits other defining characteristics.	The agreement should include the street address, square meterage and number of rooms in the unit, an also a description of any other characteristics, appliances, and fixtures that the seller intends to convey when he sells the unit.
Statement of marketable title	This provision usually exists in the sales contract, but not in the presales agreement.	The contract should state as a condition to the sale that the seller conveys to the buyer marketable title, e.g. title that is unencumbered by mortgages, liens or other competing interests.
Risk of loss	This provision is typically omitted from the presales agreement.	The contract should state who bears the risk of loss should the unit be destroyed, damaged or condemned during the period from signing of the presales contract to closing.
Breach of contract	The agreement states that the parties agree to resort to negotiation or arbitration before pursuing litigation.	If the parties intend to use a third party negotiator or arbiter this should that party should be named specifically in the contract. Also, where funds are held in escrow the contract may state that they become liquidated damages for the seller should the buyer breach the contract.
References to other laws governing the transaction	The agreement contains boilerplate language that "all other relev nt laws" are incorporated into the contract.	References to the contents of the most important laws should be mentioned in particular. The Civil Code provisions on notarization and registration should be expressly mentioned.
Payment terms	The contract contains only the final price that will be paid by the purchaser and the date on which it will be paid.	The contract should contain specific language on form of payment (cash or wire transfer), place of payment, whether money is to be placed in an escrow or paid in installments. Additionally, if closing of the sale is dependent upon the buyer acquiring financing to buy the unit, then specific financing terms (e.g. loan to value ration, interest rate) that are acceptable to the buyer should be included in the contract.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • date and location where sales contract will be signed • list of additional expenses and party responsible for payment • date of effectiveness of the contract • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • copies of agreement to each party

Shared Participation Agreement

The widespread use of the shared participation agreement, as discussed earlier in this paper, is attributable to the financing and tax advantages is affords developers. The form of a shared participation agreement looks something like a pyramid. The main investor in the project receives investments from other investors who themselves may represent the aggregated funds from any number of investors.

Shared participation arrangements are in use in every city visited by the author and their contents are substantially the same in each location. Like most real estate contracts used in Russia the contracts are brief, inordinately favored toward the drafter (usually the developer) and lacking material terms. Coupled with these problems for the investor is the fact that given the large sums of money and participants in these deals, investors are generally not in a position to exercise any influence over the real decision-makers or financial managers in the project. There are a number of reforms external to the contract form, such as housing finance and land reform, that would lessen the need for use of the problematic shared participation arrangement. However, reform of these broad areas is slow and meanwhile the shared participation has become the preferred mechanism for developing multi-family housing. It is within the existing structure of the shared participation arrangement that suggestions for short term reform must be made. Samples of shared participation agreements in use in St. Petersburg and Yaroslavl are contained in Appendix C.

A checklist for the provisions that might be included in the shared participation agreement to improve the existing forms in use include the following.

- **Date.** This should be a standard inclusion in any contract.
- **Parties to the transaction.** The parties in the transaction should be a subinvestor and main investor (developer or builder) or subinvestor and higher tiered investor. It is important to clarify who these parties are to make clear against whom the parties have a legal cause of action should the terms of the contract be breached. The parties listed here should be the same parties that later execute the transfer of ownership agreement. If this is not the case then the shared participation agreement should make reference to this in the provision regarding eventual transfer of ownership rights at completion of construction.

Defining who the parties are in a shared participation arrangement is an extremely problematic issue. Broadly speaking, the real parties to the transaction are all of the investors who will take possession of the units and the developer or builder financing and constructing the project. In practice, many shared participation agreements are executed not between the subinvestor and the main investor (developer) or builder, but between the levels of subinvestors and first tier investors who have direct contractual relationships with the main investor (developer) or builder. The main investor (developer) or builder is not a party to this agreement and may not even be aware of the agreements between first tier and lower tier subinvestors. In this case, should the first tier investor act fraudulently and execute more than one shared participation agreement for the same unit or abscond with the subinvestor's money, the subinvestor has no rights

vis-a-vis the main investor (developer) or builder. This obviously leaves subinvestors in a very vulnerable position.

What are the potential solutions to remedy this problem? One answer, as a developer in St. Petersburg suggested, is to make the first tier investor (often a broker, developer or large enterprise) a co-developer with the developer or builder. Thus investors will have a contractual relationship with the main developer or builder of the project. A second, non-contract remedy is to require that all shared participation agreements be registered. Any potential investor in a shared participation arrangement should first check the appropriate registration records. For those who do not check the registry and executed an agreement for a unit that is already obligated to another, the law would protect the party who registered first.[39]

- **Description of the property.** Ideally, the description of the property would be almost as detailed as the description for a presales contract of an existing unit. If a developer has architectural plans for the project he should at least be able to include in the shared participation agreement the unit address, floor number, apartment size, and number of rooms. This information is extremely material to how much the unit will cost to construct. Where a contract leaves this information vague, by providing only a street address, for example, an investor

[39]Another non-contract remedy may already be available. A recent Presidential decree allows developers to issue housing certificates to investors. For investors the process looks much like a shared participation arrangement, they pay for the financing of construction and upon completion of construction they are allowed to redeem the certificate for a unit. The certificates are negotiable so it does not matter whether the investor has a contractual relationship with the the developer. When the time comes for redemption of the certificate, the developer is obligated to accept the certificate from the one who possesses it.

has no way to gauge what the unit will eventually cost and no way to make a decision in advance about whether it is financially wise for him to go through with the deal.

In practice, the description of the property in shared participation agreements varies considerably. Some developers are able to offer model floor plans from which investors may choose and the characteristics of the floor plan are incorporated into the agreement as the property description. Quite common is a description that contains the street address of the property (minus an apartment number or floor designation) with specific information on the number of square meters and rooms that an investor will receive. In some cases the property description is so vague as to be nothing more than the number of square meters the investor will receive.[40] St. Petersburg has dealt with this problem by refusing to grant permission for the use of shared participation financing in new construction projects unless investors are provided a specific building address.

- **Obligations of the parties.** This section should specify the investor's obligation to pay in a timely manner and the obligation of the party receiving payment to either use the money to finance construction of a unit or invest the money with the entity constructing the unit, depending upon who is the party receiving payment. Where payments are made between subinvestors this term should explicitly state that the payments made by lower tier investors will be used

[40]The latter case is common where the developer is the city Department of Capital Construction (UKS) that is using private investor financing for residential construction. Usually the UKS will not earmark particular investments for a definite project, but will promise the investor a certain number of square meters in one of the UKS's housing projects under construction.

exclusively for project financing. The contract may provide that the higher tiered investor will provide receipts to the lower tiered investor for payments made to the main investor. Unless otherwise specified, no portion of the subinvestor's payment should be taken by a higher tiered investor as commission or payment processing charges.[41] Higher tiered investors should have fiduciary duties to lower tiered investors from whom they accept payment to forward that payment on to the main developer. This section should also contain a clause which obligates the higher tiered investor to forward the lower tiered investors payment to the main investor within a specific number of days.

If the parties intend to register the shared participation agreement it should be specified here whose responsibility that is and who will pay registration fees. This section should also be explicit in how ownership rights will be transferred to the investor once construction is completed. This process may differ from city to city and within cities depending upon whether the main developer is a public or private entity.

Most shared participation agreements used contain very brief terms outlining the obligations of the parties. In essence, this section states that in exchange for a certain specified sum the developer will transfer ownership to the investor of a certain number of rooms and square meters of housing. Some agreements contain elements of the provisions discussed in the above paragraphs, but most

[41]These payments are generally paid by the developer who has retained an intermediary to organize financing for a project.

would be significantly improved, yet not significantly lengthened, by including some of these provisions.

- **Payment.** Making payment in the amount specified and according to a schedule contained in the shared participation agreement is the investor's exclusive obligation. Payment may be formulated as a total investment (purchase) price or as a price per square meter. Shared participation agreements in use vary as to how this provision is stated. Most common appears to be a statement of the payment as the total investment. How the purchase price is stated in the contract is probably less important than the purchaser finding some way to verify that the price he is paying for the unit realistically reflects the cost of construction. Local pricing centers that track the cost of various increments in the construction process along with other official and unofficial sources of information on sales prices are sources for this information.

Given Russia's highly inflationary environment this clause should include a phrase that the developer has a right to demand additional payment at the end of the construction period should the final cost of construction be greater than originally intended. The terms of any additional payments should be in writing in a document that becomes an addendum to the original shared participation agreement.

Shared participation agreements universally contain a clause which allows a developer to demand payment of additional sums after completion of construction. The problem with this provision is that it is often stated in very general terms and does not reference any external source that will serve as a guide to predict what

additional amount or percentage on the original investment the investor will be required to pay. A remedy might be to include a clause which states that the local pricing centers or entity with similar information will be the source the parties consult in determining what the additional investor payment will be.

Also omitted from this provision is a notice requirement to investors allowing them a guaranteed, reasonable amount of time to find a way to come up with the extra money they will need before the developer will transfer property rights in the completed unit to the investor. It is understandable that from a practical perspective the developer cannot conclusively fix the final cost of construction at the time of the shared participation agreement. However, this should not become a simple mechanism for developers at the eleventh hour to terminate contracts with investors who cannot come up with the final payment on short notice and then sell the completed units to purchasers at a huge profit.

The payment terms should also include a schedule of payments that is included in the shared participation agreement or attached as an addendum. Investors should be clear when their payments are due and to whom payments should be made, including an address or wire transfer account number where applicable. Common terms contained in Russian shared participation agreements are that payment must be made within a certain number of days after signing of the contract and at regular intervals thereafter, or within a certain number of days after the first of the month. There is generally no penalty for early payment and some developers reward investors for early payment by guaranteeing no increase in the purchaser price after completion of construction.

- **Penalties for late payments.** Penalties for delayed or missed payments should also be express in the contract. The contract should state how the penalty is derived (as a percentage of the total investment, for example), what the grace period is for late payments and the developer's right to terminate the contract if payment is not made within the grace period. In existing shared participation agreements, where the investor defaults on a payment, penalties often begin immediately. It is not uncommon that the contract contains no grace period. If the investor does not make restitution within a period defined in the contract the developer has the right to reduce the investor's share or transfer the investor's share to another investor. In either case the developer will usually return to the investor any sums already invested. Unless the developer can easily and cheaply sell the defaulting investor's share in a project it is not in the developer's best interest to have such harsh penalties. Also, out of a concern for fairness the investor should be given some sort of a grace period particularly if previous payments were made in a timely manner.

- **Contract breaches and premature termination.** The two breaches parties to a shared participation contract are most concerned with are the investor's payment default and the main investor's (developer's) or builder's inability to deliver the final product. Investors at lower levels in the transaction chain are also concerned that the higher tiered investor to whom they make payment forwards that payment on to the developer or builder.

This section already addressed under the "penalties for late payments" heading contract terms the issue of investor payment default. An alternative to

terminating the investor's interest in the project and returning his money is for the developer or higher tiered investor to allow the investor to sell his shares in the project. The investor receives a price for his shares that reflects the market value and the developer or higher tiered investor is freed from having to find a new investor.[42] Where this option is included in the contract, the contract terms should make clear that a new shared participation agreement is executed between the purchasing investor and the developer or higher tiered investor with whom the investor selling his shares executed the original shared participation agreement. Some existing shared participation agreements do contain a clause which states that in the event that the investor is unable to meet its financial obligations under the contract, the investor may have the right to transfer its share to another investor. Generally, developers insist that this may only be done with the express permission of the developer or higher tiered investor and a clause to this effect is contained in the contract. If the law were clear that the investor owned his shares then it would be reasonable to argue that the developer has no right to restrict the investor's sale of his shares. However, until this provision of the law is clarified it is not unreasonable that the party with whom the investor has a contract should reserve the right to approve the investor's sale of his shares, provided the approval is not unreasonably withheld.

[42]This option will be less attractive to developers near the final stages of the project where it is more profitable to return invested sums to the original investor, use the developer's own funds to finish the project, and then sell the completed unit for current fair market value to a purchaser.

In reality, the author's discussions with real estate professionals and developers revealed that this scenario is met quite rarely. The reason is that it is economically very unwise for the investor, even a financially strapped investor, to back out of a project before completion. If the investor backs out of a project during construction and another investor is substituted, then the old investor receives only the value of his original investment in return. If, however, he manages to borrow additional funds from personal or institutional sources to complete his payment obligation under the contract, he may sell the completed unit and recoup his initial investment plus borrowed funds and perhaps even a profit.

An investor's main concern should the main investor (developer) breach the contract and not complete construction is that the investor can recoup his investment.[43] The shared participation agreement should state that if the completed unit is not delivered within a certain number days after promised delivery the investor is entitled to damages. Fixing the amount of damages to which the investor is entitled is difficult and probably not wise given the volatile economic environment in Russia. Also, given the risky nature of the shared participation arrangement investor's cannot realistically expect to recoup substantial damages. A reasonable damage award may be the value of the investor's original investment multiplied by some coefficient to account for at least

[43]The Law on Investment contains language that the investor is entitled to losses amounting to actual expenditures plus loss of expected benefits. Law on Investment Activity art. 17.1. Also, a reading of the law which accords to investors property rights during construction arguably gives the investor standing to determine how sale or completion of the uncompleted project will be handled.

some degree of inflation. This is what is generally done in existing agreements. The investor is entitled to return of 140 to 160 percent of his original investment, subject to a penalty for canceling the contract. If conflicting interpretations of the Law on Investment Activity are resolved to accord investors property rights in the project during construction then investors will be in a more secure position. As owners of the uncompleted project, they will have the right to determine whether to sell or completed construction on the project.

As an incentive to complete construction on time some penalty should be levied against the developer who does not have the unit ready for delivery to the investor on the date specified in the contract. If, during the course of construction the developer realizes that delivery will not happen on time, then the parties should execute an addendum to the original contract pushing back the delivery date. If the investor cannot agree to this date he has the option of backing out of the contract. If the investor agrees, then the developer has no liability to the investor when the unit is not delivered on the original delivery date. If the developer does not make delivery within a reasonable grace period after the delivery date specified in the contract, then fairness mandates that some penalty be imposed. This may be in the form of a nominal reduction in the investor's financial obligation to the developer that increases the longer the developer is in breach. The penalty should be capped at some amount that does not impose a substantial hardship on the developer to reflect the fact that the investor knowingly assumed the risk of a rather risky venture when it entered into the shared participation arrangement.

- **Term of the contract.** The shared participation contract reaches a natural termination when the project is complete, the investor has paid all sums due and the transfer of property rights agreement is executed. This provision should define a date and a location where the transfer document will be executed.

In actual contracts this provision typically states that upon completion of construction and receipt of all necessary permits and licenses the parties will execute a contract transferring property rights in the unit to the investor. This provision also contains language which states that the transfer will take place in accordance with all applicable federal laws and procedures. There are a number of housing and property laws that are of some related importance to the transaction, the most important being the registration requirement. Drafters of the shared participation agreement should make a decision about which of these laws warrant specific explanation in the contract.

- **Additional expenses associated with transaction.** Where there are additional expenses associated with the transaction these should be mentioned specifically in the shared participation agreement along with reference to who is responsible for paying those expenses. These expenses might be the cost of notarization, registration, administrative costs encountered by the developer, etc. Such a provision is generally contained in existing agreements.

- **Amendments to the contract.** The agreement should contain a clause which states that all changes will be made in writing and attached as addenda to the original agreement. This is for the protection of both parties and, if complied with, is sure to prevent conflicts in the future. Most shared participation

agreements contain this clause, although some, perhaps not anticipating modifications, omit this important provision.

- **Date of effectiveness of the document.** Specifying the date of effectiveness of the document is important because it fixes the date on which the parties become contractually obligated to one another. If the parties stipulate in the contract that the contract with be notarized or registered then the 1994 Civil Code provides that the document does not become valid until notarization or registration. Parties might consider notarization because it adds some objectivity to the contracting process. The notary will ensure that the terms of the shared participation agreement are lawful and the parties capable of contracting. Registration is one method investors may use to guard against an unscrupulous developer or higher tiered investor selling the same shares to two investors. Registration puts all potential investors on notice that the shares are already committed.

In existing agreements this clause generally states that the agreement comes into effect from the moment it is signed by both parties. The agreement is generally not notarized or registered.

- **Date and parties signatures.** The comments made in earlier parts of these paper regarding this section of the contract also apply here. Additionally, where one of the parties to the contract is a juridical entity the person signing the contract must have the legal authority to act on behalf of the company to create a contractual obligation to the other party.

Shared Participation Agreement

Terms	*Existing contract language*	*Desirable contract language*
Parties to the transaction	Subinvestor signs contract with either main investor or higher-tiered investor who has contract with main investor. This leaves the subinvestor vulnerable. Should the higher-tiered investor engage in fraud or misrepresentation the subinvestor has no rights vis-a-vis the main investor.	All higher-tiered investors negotiating agreements with subinvestors may become partners with the main investor. Thus, the main investor will have contract obligations to all subinvestors. A non-contract remedy is for subinvestors to register their shared participation agreement and put all other potential subinvestors on notice.
Description of the property	Description is limited to square meterage and number of bedrooms.	Description should include square meterage and number of bedrooms along with specific unit address along with any other appliances or fixtures that will become the ownership of the investor. Ideally, the developer will provide the investor a variety of floorplan models from which to choose.
Obligations of the parties	Agreement states that the higher-tiered investor will transfer ownership in a unit with certain characteristics upon receipt of a certain amount of money.	• The agreement should additionally state that the higher-tiered investor acknowledges its fiduciary responsibility to ensure that all payments are made to the main investor and used only for construction. • The contract should also obligate the higher-tiered investor to provide the subinvestor proof of payment to the main investor. • The agreement should include provisions on how and when ownership rights will be transferred after completion of construction.
Payment terms	Agreement contains a total investment price, payment schedule, and penalty provisions. Agreement stipulates that the developer has the right to demand additional payment before transferring ownership if inflation or unexpected price increases make cost of unit construction more expensive than original contract amount. the	• Contract should contain a provision referencing a third party indicator source that will be the authority to determine the additional investor payment. • Contract should contain a notice requirement granting the investor a reasonable number of days to come up with the additional payment. • Form of payment and location where payment should be made must be specified. • Any changes to payment schedule must be in writing and attached as an addendum to the agreement.
Penalties for late payment	Grace period is often very short, if one exists at all. Higher-tiered investor reserves the right to reduce the investor's share or cancel the contract with the investor and transfer investor's share. Where the contract is canceled the higher-tiered investor is obligated to return the subinvestor's investment, perhaps minus a nominal administrative fee.	• Out of concern for fairness and practicality (finding another investor may be time-consuming and expensive), harshness of the penalty should be reduced and a longer grace period included. • In the case where the subinvestor's share in reduced for late payment, the subinvestor should have the option of reobtaining that share within a certain amount of time if he can make restitution of his late payments.
Contract breaches and premature termination	• With the higher-tiered investor's permission, the subinvestor has the right to sell or transfer his shares to another subinvestor. • Where the project is canceled the subinvestor is entitled to a return of his full investment multiplied by a coefficient to account for inflation. No penalties are levied against the developer/main investor for delays in delivery.	• The contract should additionally state that the higher-tiered investor cannot unreasonably withhold his consent for the subinvestor to transfer his share. Also, the contract should make clear that when the subinvestor transfers his shares to another, the subinvestor is freed from all legal obligations vis-a-vis the higher-tiered investor. • Given the riskiness of the investment, return of the full investment at current value is fair. However, the developer/main investor should be forced to a pay either a penalty or compensatory damages when the unit is not delivered on the contract-specified date.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • date and location where transfer of ownership document will be signed • list of additional expenses and party responsible for payment • date of effectiveness of the contract • references to other applicable laws • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • notary attestation (if applicable) • copies of agreement to each party

Final Contracts Conveying Property Rights

Purchase-Sales Contract

In the cities the author visited most sales of existing housing are executed with the use of a standard purchase-sales contract not preceded by a presales contract. Two sample contracts from Moscow and St. Petersburg are contained in Appendix C. There is substantial uniformity in the sales contracts used in these cities. The contracts are short, most not exceeding 2 or 3 pages, and contain only the most essential terms. There are numerous provisions of the existing contracts that could be improved upon or added to strengthen the clarity and balance of the contracts.

- **Names and addresses of parties.** This provision should include the full names and addresses of the parties who are purchasing and will possess ownership rights in the unit. Including the correct, legal names of these parties is important for the public records, particularly the title registry. Where one of the parties is a juridical entity the representative of the entity who is party to the contract should have the legal authority to bind the company. Most Russian sales contracts are not problematic on this provision and include all of the relevant information.

- **Description of the property.** Like the presales contract, the property description should be detailed enough to distinguish it from all other properties. Also, any appliances, fixtures or other interest in the property beyond the space itself should be detailed here. Where land or the owner's percentage ownership of common areas are being sold this information should also be included in the

description. Russian contracts vary on the detail included in this clause. Some are far too brief and state only the total square meters in the unit and number of rooms. Others include this information as well as a description of additional identifying characteristics of the unit and an enumerated list of the elements to which the purchaser acquires a property right. Including a detailed property description is advisable because it avoids conflicts at closing or post-closing when the parties are in dispute over exactly what the purchaser bought.

- **Testament of seller's ownership of the property.** This provision should state that the seller legally possesses the interest which he conveys. Statement of the seller's method of proof and public record where his ownership is recorded may be included in the contract. In existing contracts this clause is generally included and refers to whatever documentation the seller presents to verify its ownership rights to the unit. It may be a privatization certificate, purchase-sales contract, proof of inheritance or gift. The type of proof is often specified in the contract along with a reference to the public source where the ownership right is recorded.

- **Seller warranties and exclusions.** The seller should warrant in the contract that there are no individuals with competing ownership or occupancy interests in the unit and the title is not encumbered by a mortgage or other liens. Proof of the veracity of these warranties is the result of the title search presented to the buyer. The contract should state that the seller has completed a title search. Given that no formal title insurance is available, it is advisable that the buyer receive copies of the documents from the title search. These documents

may be attached and incorporated into the sales contract. If the seller has obtained some type of title insurance through a broker this should be stated in the contract and the terms of the insurance incorporated into the agreement in an addendum.

Exclusions to the seller's warranties should also be included in the contract. If the title search reveals people with competing ownership or occupancy interests in the property who cannot be located or refuse to relinquish their rights, then these people and the nature of their interest should be named in the contract. Also, if the unit is in a condominium or cooperative where there are restrictions on occupants rights contained in the condo or co-op bylaws, this fact should be noted in the exclusions section.

- **Sales price of the unit and payment terms.** This provision should include the total sales price of the unit, the amount of money already paid into an escrow account, the amount of downpayment and any amounts to be paid after closing. If all sums are not to be paid at closing the contract should specify how and where future payments will be made.

The true amount of the sales price is very often not included in Russian sales contracts. Neither are amounts in escrow or other payment clauses included. Law requires that the BTI inventory cost be the minimum sale price of a unit. Therefore, to avoid paying taxes on the actual fair market value sales price of the unit, parties will state the BTI value in the contract and then pay the remaining price under the table. This presents a certain risk to the parties if payments are not all made at closing or if there is a later title dispute and the purchaser wants

a cash remedy. However, this underreporting of the sales price is the general practice that will likely continue barring tax reform. If the parties do not intend to put detailed payment terms in the contract, parties should make sure that they keep written records of all payments made and received.

- **BTI inventory cost.** Regardless of the figure reported in the contract as the sales price of the unit the BTI inventory cost must be included in the contract because it is on this figure that the notary fees and property taxes are determined. This figure is standardly included in existing contracts.

- **List of expenses.** A list of expenses associated with closing the transaction (brokers fees, registration, title search, notary fees, etc.) should be included in the contract along with a reference as to who is responsible for paying the fee. In addition to the contract parties may find it useful to keep a tally sheet (or settlement agreement) that specifies all of the expenses incurred by each party respectively in the closing.

Standard contracts in use sometimes reference specific expenses for which either the purchaser or seller is responsible, but generally there is just a one-line sentence which states that either the purchaser is responsible for all expenses associated with the closing or the parties will split the costs. There is nothing particularly wrong with stating this provision in general terms, but more detailed language helps lessen the possibility that there will be conflicts later.

- **References to other applicable laws.** Like other contracts involving real estate transactions, sales agreements often contain a generalized statement that "all other relevant federal and local laws apply" or may actually specify particular

laws. Frequent examples are references to the notarization and registration requirements of the Civil Code and various Council of Ministers decrees stating that upon sale of an apartment the purchaser assumes responsibility for all maintenance and repair in the unit all residential units must be used as dwelling units.

The vagueness of a statement like "all other applicable laws apply" contributes to the lack of consumer education generally on their rights and responsibilities in real estate transactions. While an exhaustive list of all applicable laws is impractical, referring to the most important laws and stating in a sentence their salient points is advisable. Statements that a dwelling may be used exclusively for residential purposes, the transaction must be registered, the purchaser assumes all tax and utility obligations are examples of the most important provisions. However, such detail may not be necessary where the parties to the contract receive advice from a notary or attorney on the applications of relevant laws. A clause is frequently included in existing contracts that it is the responsibility of the notary to apprise the parties of their rights and obligations under these laws. The author is not aware whether this obligation of the notary is required by law or is just the practice in some cities. However, where this practice is adhered to a more detailed description of applicable laws and their contents is not necessary.

• **Date of effectiveness of the contract.** The 1994 Civil Code states that transactions subject to registration that are not registered become invalidated.[44] This clarifies an ambiguity, reflected in various contract formulations on this point, as to when the transaction becomes effective. Some contracts state that the document becomes effective upon parties' signature and notarization. Other contracts provide that the contract becomes effective only after signature, notarization and title registration. The Civil Code makes clear that legally the contract comes into effect only after registration, providing an incentive to purchasers to register the transaction immediately after closing.

• **Party signatures and notarization.** All parties to the contract should be present at the closing and sign in the presence of each other. All individuals who are named as parties to the contract should sign the contract. Where one of the parties is a representative acting on behalf of a juridical entity the representative's authority to bind the company should be verified by the notary.

The notaries signature should comply with all legal formalities. The notaries name, stamp and license number should be included in the contract as the law requires. The notarization should be accompanied by a notary's attestation that the parties are who they purport to be and they are legally capable of contracting. Additionally, the attestation should include that the notary has authenticated the title search documents and verified the seller's right to transfer ownership of the

[44]RF Civil Code art. 165.1 (1994). The law also states that where the underlying transaction is properly concluded but the one party refuses to register, the other party may petition the court to demand that the first party register the transaction. Id. at art. 165.3.

unit. The attestation is important in case there is some flaw in the closing for which the notary is responsible and the parties attempt to attach liability to the notary.

Most existing sales contracts conclude with the parties' and notary's signature and date of signing. It is recommended that the notary's attestation also be included, particularly given the increase in the use of private notaries.

Purchase-Sales Contract		
Term	*Current Contract Language*	*Desirable Contract Language*
Seller warranties and exclusion	Contract states that seller ensures that title to the unit is unencumbered and there exist no competing interests.	The contract should additionally state that the seller has performed a title search. Given that there is no formal title insurance policy, the results of the title search should be attached as addendum to the sales contract. Any exceptions to seller's warranty of unencumbered title should be noted. If the broker has provided title insurance the terms of the insurance should be included in the contract.
List of additional expenses and parties responsible for payment	Contract states that all additional expenses are paid by (specified party).	The contract should specifically list what those expenses are, their amounts, and which party is responsible for payment.
References to other applicable laws	Contract states "all other relevant laws apply."	The contract should specifically include references to notarization and registration legal requirements. For the sake of consumer education, other laws of most relevance to natural persons should be listed and their salient points summarized.
Dispute resolution provisions	The agreement states that the parties agree to resort to negotiation or arbitration before pursuing litigation.	If the parties intend to use a third party negotiator or arbiter this should that party should be named specifically in the contract.
Date of effectiveness of contract	Contract states either that the document becomes effective after signatures and notarization or upon registration.	The contract should clearly state that ownership rights vest only after registration. This is clear from the 1994 Civil Code.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • testament of seller's proof of ownership • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • notary's attestation • copies of the contract to each party

Transfer of Ownership Agreement

In a shared participation arrangement the transfer of ownership agreement is the document which officially transfers ownership to the shareholder after completion of construction. In some cities the transfer of ownership agreement is called a purchase-sale contract, but this is misleading. Technically, the transfer is not a sale. The developer does not have clear and exclusive ownership rights to sell the unit. Although there is still ambiguity in interpretations of the relevant law, there is a strong argument that the shareholder has property rights in the unit from the first payment the shareholder makes. Therefore, the developer is not "selling" the unit to the shareholder who already has a property right in the unit. Referring to the document as a purchase-sale is misleading also because the transactions does not give rise to the same tax implications raised by a true purchase-sale. The developer transferring ownership is not technically the seller of the real estate and does not have to pay tax on the amount the shareholder invested in the unit.

Given that the property rights of the shareholder and developer are unclear during the construction phase, the transfer of ownership agreement's primary purpose is to formally grant to the shareholder full ownership rights in the unit. In this sense, the contents of the transfer agreement look very much like a sales contract.

- **Date**. This is a standard part of any contract.
- **Names of the parties**. The names of the parties should be the investor and the party who actually has the right to transfer ownership of the unit. This may

not be the same party that signed the shared participation agreement with the investor. The shareholder may have a shared participation agreement not with the main investor but with a subinvestor who has a shared participation arrangement with the main investor (developer). As discussed earlier in this paper, the shared participant is at risk in this arrangement because the higher-tiered investor with whom the subinvestor has a contract may not always forward subinvestors' payments on to the main investor or may sell the same shares to multiple subinvestors. Once all of the payments have been made and construction is complete, the subinvestor must be sure that the entity with whom he concluded the transfer agreement in fact has ownership rights in the unit. This entity may be the main investor, it may be the lower-tiered investor with whom the investor signed the shared participation agreement or it may be the municipality. Unless there is a local law providing that only the city may grant ownership rights to subinvestors or an agreement between the main investor and lower-tiered investor granting to the lower-tiered investor the right to transfer ownership rights to investors, then the subinvestor should conclude the transfer agreement with the main investor (developer).

- **Description of the property.** The property should be described to the exclusion of all other properties. It should include the address, the square meterage of the unit, number of rooms, appliances or other fixtures in the unit and a description of any other items or characteristics of the unit of which the investor becomes the owner. The current practice in transfer agreements appears to incorporate all of the above elements. Investors should be sure that this

description matches the description from the shared participation agreement. The parties may want to incorporate the shared participation description by reference into the transfer agreement to avoid disputes about the nature of the property to which the investor is entitled.

- **Owner's right to transfer ownership.** The transfer agreement should contain a provision stating, and providing proof, that the owner possesses the right to vest property rights in the investor. As discussed above, this proof may come in a variety of forms. In addition to the owner's attestation that he has the right to convey ownership, it is advisable that this proof be attached as an addendum to the agreement. Additionally, the agreement should contain a provision verifying that all occupancy and other permits necessary to place the building in operation are obtained. Standard transfer agreements generally contain the latter type of provision and omit the former.

- **Payment terms.** By the time the parties are ready to execute the transfer agreement all of the investor's payments have generally been made. If this is the case, this section should explicitly state that all payments have been made, perhaps including the amount of payments, and that the owner will not demand additional payments from the investor. This will act as a safeguard and hopefully a legal preclusion against the higher-tiered investor being able to demand additional funds from the shareholder. This provision will stop the clock on this right that the higher-tiered investor is accorded in the shared participation agreement. If there are outstanding or additional payments remain, a payment

schedule may be included in the transfer agreement or as an addendum to the agreement.

- **BTI Inventory Cost and File Number.** For purposes of determining notary and other fees set in relation to the BTI value, this provision should be included in the agreement. Also, where the unit is registered at BTI, including the file number may expedite the registration process. This provision is almost universally contained in transfer agreements.

- **Payment of ancillary expenses.** The agreement should state which party is responsible for paying notary, registration and other related fees. Most agreements do contain this provision.

- **Notarization and registration.** Although not expressly required by law, for their own protection the parties should agree to have the transfer agreement notarized. The 1994 Civil Code provides that where the parties contractually agree to notarization of a document then the notarization will become a legally binding condition of the contract. Registration of the document is required by law. As discussed earlier, varying interpretations of the Law on Investment fix the vesting of property rights in the shareholder either at the first investment payment or upon registration of the transfer agreement. In addition to the legal requirement to register all transactions in immovable property, as a safeguard for the shareholder and to promote the reliability and completeness of the public record, transfer agreements should be registered.

- **Date, signatures and copies.** The parties, or their proxies, should sign and date the agreement in the presence of the notary. Each of the three parties

should receive a copy of the agreement. In practice, it is not always the case that every party to the agreement receives a copy.

Transfer of Ownership Agreement		
Terms	*Existing contract language*	*Desirable contract language*
Owner's right to transfer ownership	Non-existent.	Given the confusion surrounding ownership rights in the shared participation arrangement, the contract should clearly state the party who is transferring ownership possesses the right to do so and provides proof of this right.
Payment terms	Contract states amount that subinvestor has invested in unit.	The contract should also state that all payments have been made and the party transferring ownership will not demand any additional payments. If this is not true and additional payments will be requested, their amount and payment terms should be contained in an addendum to the transfer agreement.
Notarization and registration	Agreements are registered, but not always notarized.	For the parties' own protection the agreement should be notarized. Registration is required by law.
		Additional terms to be included. *All of these terms are occasionally used in some contracts in use, by an advisable practice is to always include the following:* • list of additional expenses and party responsible for payment • date of effectiveness of the contract • references to other applicable laws • parties signatures and date (with proof of agent's authority to bind the company if one of the parties is a juridical entity) • notary's attestation • copies of the agreement to each party

The contracts that have been in use up until now to facilitate residential real estate transactions contain many of the basic provisions that should be contained in a contract conveying real estate. However, all of these contracts would benefit

from substantial improvements that provide more explicit rights and obligations of the parties in a more equitably balanced contract. Considering that it may be some time before parties will be able to rely on the judicial system for equitable resolution of their disputes, it behooves contracting parties to deal with each other directly and honestly and negotiate contracts that incorporate both parties requirements.

IV. CONCLUSION

The ability to securely and swiftly transfer real property at low cost is fundamental to the development of a market economy. At the same time, to encourage consumer participation in the market property rights must be secure and contractual relationships must be predictable and equitable. Up to this point the infrastructure of residential real estate transaction has been adequate to handle the volume of transactions. However, there are a number of characteristics of the system that increase consumer risk and offer the potential for corruption creating an extremely unfavorable economic and legal environment for consumer participation in the private real estate market. Some of those characteristics are:

- *Conflicts of interest between brokers and parties to the transaction.* Brokers often act as escrow agents in transactions or perform other duties where they are representing the conflicting interests of buyer and seller simultaneously. Additionally, the practice of brokers to use their own in-house notaries to oversee closings raises the possibility of ethical problems and certainly gives an air of impropriety to the transaction.

- *Lack of title assurances.* The quality of the title search performed before real estate conveyancing is of questionable quality. This, coupled with the lack of title insurance raises questions regarding the security of property owners' title. The quality of the title insurance provided by brokers is currently untested, but in any event is extremely informal and probably not adequate to fully compensate parties who lose a title dispute.

- *Uncertainty in the legal implications of registration.* There are currently no uniform standards for registering title or laws providing guidelines on how to determine priority of interests. Furthermore, maintaining separate registries for land and structures creates potential for conflicts and mistakes.

- *Onerous tax burdens.* Elements of the current tax regime are incentives for tax evasion, encouraging illegal activity and denying the government revenue.

- *Uncertain property rights in purchaser-financed new construction.* Shared participation arrangements exploit the uncertainty in the law regarding investors' property rights and deny investors interest in a project until construction is complete. Lower tiered investors with no contractual relationship to the main developer or builder are extremely disadvantaged by the current structure of these arrangements.

- *Boilerplate contracts omit or contain inadequate material terms.* Contracts are often imbalanced in favor of the drafter in the superior bargaining position. Material terms protecting more vulnerable parties are often absent. Consumers are not sufficiently educated to anticipate the problems inherent in these types of contracts.

- *Lack of consumer education.* Neither the government nor real estate professionals have undertaken any serious efforts to educate the public on basic economic and legal implications of engaging in real estate transactions. Consumers are overly reliant upon brokers and notaries to represent their interests in real estate transactions.

The appropriate remedial measures for some of these weaknesses in the system are broad-based legislative and policy responses. For example, some of the problems with registration are best dealt with by developing uniform standards on a national level. Likewise, many of the issues associated with the inadequacy of the shared participation arrangement will be resolved as the housing finance system develops. Some of the other problems with the system will diminish or disappear as the formal judiciary or alternative dispute resolution systems address legal disputes and set precedent and guidelines for the legal parameters of contract and other legal relationships regarding real estate transactions.

While some of the above-described reforms will go a long way toward improving the overall efficiency and effectiveness of real estate transactions, at the heart of any transaction is the contractual relationship between the buyer, seller and their agents. If these relationships are characterized by conflicts of interest between the parties, imbalanced contractual rights and obligations, absence of clarity in material contract terms, then any real estate transaction will be flawed from the start. Therefore, the author suggests that real estate professional, legislators and consumers begin to look more critically at the contracts used to facilitate real estate transactions. Several main areas to be addressed:

A balance should be struck between allowing parties freedom to contract and incorporating enough detail and protections in contracts to provide certainty and security. Existing law, particularly the 1994 Civil Code, provides some general guidelines on contract drafting, but addresses essentially the form of the contract,

not the substance. To date there is little judicial precedent to provide guidance on drafting real estate contracts. In this vacuum parties have been given considerable freedom to formulate contracts without legislative or judicial interference. The contract forms that have emerged are short and simple. However, as this paper points out, the trade off for this simplicity is that the contracts lack essential detail and consumer protections. To encourage future consumer participation in the private real estate market policymakers and real estate professionals must find a way to balance the need for contracts that facilitate efficient transactions and low transaction costs with sufficient detail and standardization to provide consumers the security and predictability they demand.

The answer is either for the real estate industry to take the lead by establishing standardized practices and documents, or for the legislature to pass laws establishing guidelines for contract formats. This is an area ripe for real estate industry trade associations to make an impact. Standardizing practices creates a predictability and certainty to processes that in turn encourages consumer participation. Contracts that are balanced foster greater commitment and incentive in parties to work to fulfill the contract conditions for their mutual benefit. Charging members fees for producing and disseminating standardized contracts and conducting trainings and seminars on their use is also a way to increase revenue for the association.

Professional and ethical standards must be developed in the brokerage industry to separate the roles of realtor, title searcher, and escrow agent. This problem may

resolve itself as each aspect of the industry becomes more specialized and independent title search and escrow firms develop. Meanwhile, the industry should develop professional and ethical standards so that broker representation of multiple or conflicting interests does not occur unless expressly agreed to by a client. Establishing a reputation for honest and fair dealing increases consumer confidence and can only be a benefit to the industry. Brokers who engage in activities of questionable legality should focus on their long-term organizational goals and plans for growth rather than the short term gain to be reaped from manipulating the system.

In the event that the profession does not take the lead itself to establish these standards, concerns of fairness and consumer protection may require that the legislature develop guidelines.

The government of real estate industry should undertake a campaign to educate consumers regarding their rights and responsibilities in real estate transactions. Legislative and judicial intervention in private real estate contracts is less necessary where consumers are educated. Consumers who understand their rights and risks in engaging in real estate transactions are in a more powerful position to negotiate a contract that adequately protects their interests. Undertaking a consumer education campaign is an area ripe for a public-private partnership. The government's concern is to encourage consumer participation in the private real estate market while protecting consumer interests. The real estate industry assists its own development and consumer confidence in the industry by conveying an image that it is concerned with consumer issues.

The real estate industry, through its trade associations should consider creating pamphlets and other consumer education material on real estate transaction. The industry may even establish formal arbitration procedures for real estate disputes and disseminate the results in order to educate professionals and consumers and create uniformity in real estate practices. Finally, the industry may consider creating a type of Better Business Bureau where consumers may lodge complaints and receive information about real estate professionals.

APPENDIX A

TITLE SEARCH DOCUMENTS

Below is a list of documents typically collected to complete a title search. Notaries require collection of all of these documents before notarizing a contract.

1. *Proof of ownership.* This may be demonstrated by presentation of the seller's privatization certificate, previous purchase-sale agreement, or documentation showing the apartment was received through gift or inheritance. Where the unit in question is a single family home, the seller must also provide certification of ownership of the land from the land committee (komzem). Most notaries accept the original document from the seller. Some notaries require additional verification from the agency issuing the proof of ownership that the seller's documentation is authentic.

2. *BTI Spravka.* This is a certificate from BTI containing the inventory cost of the unit and the "technical passport." BTI keeps a record of all the owners of the unit so the certificate also contains information on whether the unit has been sold to another party or is collateralized.

3. *Permission of other owners.* Written permission (or physical presence at the notarization) of others with ownership interest in the unit. Depending upon the type of ownership tenancy (joint v. common ownership) that the seller has vis-a-vis the other owners there are certain procedures that need to be followed in ensuring the permission of the other owners.

4. *Permission of spouse.* Written permission (or physical presence at notarization) of the seller's spouse if the apartment was acquired in ownership after the marriage.

5. *Information on other propiska holders and permission to sell.* Still in existence in Russia, despite legal abolition, is an internal passport system which documents a holder's place of residence. All propiska holders for a given unit, whether the unit is privatized or in the state housing stock, enjoy certain occupancy rights to the unit for which they have a propiska. All propiska holders must give their permission for the unit to be sold. Therefore, the seller must obtain a complete list of all propiska holders for the unit and be sure they are contacted to obtain their written permission for sale of the unit.

6. *Permission to sell granted by the Department of Public Education on behalf of minor children.* Russian Federation privatization laws give minors property rights in the family's privatized apartment. To ensure that the minor's interest is represented before an apartment is sold, a 1993 law (Article 133 of the Codex of Law on Family, Marriage and Guardianship) requires that the Department of Public Education, Section on Marriage issue permission on behalf of all minors (under 18) to sell the unit. The goal is to prevent negligent parents from privatizing their unit and abandoning their child.

Although the author has no information on the pervasiveness of this problem, there seems to be a perception that this is a fairly widespread phenomenon that requires government intervention. According to at least one broker, many of the sales transactions of privatized apartments that took place before this 1993 law was enacted have been challenged by relatives or guardians of abandoned children on the ground that the sale was made illegally since the child did not legally relinquish his property rights in the apartment.

7. *Documentation on liens on property.* This documentation includes proof that there are no other mortgages, outstanding property taxes or utility arrears creating liens against the property.

APPENDIX B

COMPARISON OF CLOSING FEES IN US AND RUSSIA

Comparison of Russian and U.S. Closing Fees

Below is a chart generally comparing the types and ranges of fees associated with the sale of an existing unit in the U.S. and Russia. In both the U.S. and Russia (particularly in the U.S.) the practices and fees associated with closing may vary considerably. For instance, in the U.S. practices are affected by state laws, local customs and practices, practices of particular title insurers, brokers and escrow agents. It is not always true that brokers, attorneys or title insurers are involved in every transaction. The reader should be extremely cautious is overgeneralizing about U.S. practices based on the information in this chart.

The chart lists only those fees that are common to the closing of a U.S. or a Russian sale of an existing unit. Property that is transferred through exchange, gift or inheritance will have additional associated fees as well as some of the fees enumerated in the chart. Additionally, there are taxes on property received through inheritance or gift; property taxes on land and structures that buyers must pay; and income tax sellers must pay on sale proceeds. Generally, these fees and taxes are quite high and may impede market relations; at the very least they promote tax evasion.

The author's conclusion is that while the Russian costs associated with closing are higher as a total percentage of closing costs than equivalent charges in the U.S., the real obstacle that puts homeownership beyond the financial reach of Russians is the lack of housing finance options, with the expense of closing costs as a contributing factor.

COMPARISON OF RUSSIAN AND U.S. CLOSING FEES FOR SALE OF EXISTING UNIT

Fee	U.S.	Russia
Broker's commission	May be to one or several agents depending upon type of listing agreement. **Cost:** 6-7% of sales price **Paid by:** Seller, but indirectly by buyer in sales prices	Generally paid to just one agent. **Cost:** 5-10% of sales price depending upon services performed. Services include: •title search •documentation preparation •escrow services **Paid by:** Buyer either directly or through sales price.
Document Preparation	May be a separate fee, but generally part of attorney's fee or broker's fee.	Generally included as part of broker's commission. May be done by notary. **Cost:** 1% of BTI value if performed by notary.[45] Approximately 3% of broker's fee. **Paid by:** Buyer.
Appraisal fee	This has become a routine practice before any closing. **Cost:** Fixed fee. Approximately $250-$450. **Paid by:** Paid by buyer.	No separate appraisal is conducted. BTI inventory cost is functional equivalent. BTI documentation collected as part of title search. **Cost:** See above.
Mortgage and hazard insurance premiums	Technically not a closing cost, but funds that must be available at closing. These premiums are typically escrowed with the lender. **Cost:** Together, the premiums are approximately 1% of the sales price. **Paid by:** Buyer.	Mortgage and hazard insurance are unavailable. Where title insurance is available it is included in broker's commission. **Cost:** The once instance of title insurance the author is aware of charges 10% of sales price as a fee. **Paid by:** Buyer.
Escrow fee	Use of escrow funds and agents responsible for this services varies considerably by geography. **Cost:** Fixed fee. Approximately $100. **Paid by:** Paid by buyer.	Included in broker's fee. **Cost:** See above.
Inspection	Standard practice before closing. **Cost:** Approximately $100. **Paid by:** Negotiated between buyer and seller.	
Title search	May be inclusive or exclusive of insurance. Some title search companies provide search, preparation of policy and notarization for a fixed fee with insurance as an added expense. Some include the above plus insurance in one fee. **Cost:** May be fixed fee or percentage of sales price. If fixed fee, range is $500-$1,000 - well less than 1% of sales price. A common formulation is $1-$2 per $1,000 of appraised value. **Paid by:** Paid by buyer.	May be performed by parties or broker. **Cost:** Where broker is used the cost of document collection for title search is included in commission. Where parties perform their own searches the total cost of document collection is less than 1% of sales price. **Paid by:** If broker performs this function, buyer pays the fee. Where private parties perform this function, cost is split between buyer and seller.
Notary fee	**Cost:** Extremely nominal. $10-$20. **Paid by:** Negotiated between buyer and seller.	Notary may perform contract drafting, escrow function as well as standard notarization services. Charges vary depending upon services performed. **Cost:** 1% of BTI value for contract drafting. 3% of BTI value for notarization of document. 5% of statutory minimum wage for authenticating other documents. Depending upon the number of documents the notary notarizes and the range of services they perform, the total charge may be as high as 10-12% of sales price. **Paid by:** Buyer.
Attorney's fee	Some states require attorney participation and preparation of documents, other state allow parties to rely exclusively on themselves or broker services. **Cost:** Paid per hour at $50-$200/hour. **Paid by:** Each party pays for their own attorney.	Notary performs this function. Parties generally do not hire outside attorneys to represent their interests.

[45]For purposes of simplicity the author assumes that the BTI value and the sales price of the unit are the same for computing total closing cost expenditures.

Government recording and transfer charges	Recordation fees. **Cost:** May be fixed fee or percentage of appraised property value. As fixed fee may be $100-$400 or may be certain dollar charge ($1-$2 is typical) per $1,000 of appraised value. **Paid by:** Negotiated between buyer and seller. Transfer charges may be in the form of a fixed fee or a transfer taxes. Taxes are much higher than the fees. **Cost:** Transfer fee is a nominal payment. Transfer tax may be as high as 1%-2% of sales price or certain dollar charge per $1,000 of appraised value. **Paid by:** Buyer.	Parties must record their contract with the separate land and housing registries. Parties must also update *propiska* records. **Cost:** Registration charges are nominal, but may be higher with request to expedite registration or where city charges higher registration fee for non-residents.[46] In most cities, updating *propiska* is also a nominal charge. **Paid by:** Buyer.
TOTAL FEES	Assuming the parties use the services of a broker (not an attorney), a title insurer who performs the search and provides insurance for a fixed price, conduct an inspection and appraisal, purchase hazard and mortgage insurance and live in a location where they must record and pay a transfer tax, and the buyer pays all of the charges either directly or indirectly, the approximate minimum that a **buyer** will pay in closing costs is **9-11% of the sales price.**	Assuming, as is generally the case in large cities, that a broker is used to perform the typical range of services (title search, escrow, contract drafting, informal "insurance"), the buyer is a citizen of the city and does not request expedited registration, the approximate minimum that a **buyer** will pay in closing costs is **10-15% of the sales price.**

[46] In Moscow, non-city residents are charged a registration fee equal to 5,000 times the minimum wage. This figure was approximately $33,000 in November, 1994. This amount is reduced by 10% for citizens of the Russian Federation.

APPENDIX C

SAMPLE DOCUMENTS FROM VARIOUS RUSSIAN CITIES

Model Purchase Sales Agreement

Date
City

I/We (*name*), residing at (*address*), hereinafter referred to as "Seller" and (*name*) residing at (*address*) hereinafter referred to as "Buyer"[52] execute the following purchase sales agreement.

1. In conformity with the presales agreement executed between Seller and Buyer on (*date*), Seller has sold and Buyer has purchased the apartment located at (*address*) consisting of _____ rooms, _____ square meters of which _____ is living space. At the time of execution of this document, the apartment has the following additional characteristics

[*include here any appliances, fixtures or other features of the apartment that will become the property of the buyer*]

2. Seller certifies that he legally possesses the ownership interest he is selling as described in paragraph 1. As proof of Seller's ownership, attached to this contract is a copy of (*document proving ownership*). Seller's title to the unit is registered at (*department*) in (*file number*) as of (*date*).

3. Seller certifies that he has completed a title search on the unit and he is transferring to Buyer a unit free from all encumbrances other than those listed below. A summary of the results of Seller's title search are attached.

[*list here any liens on the unit or other exclusions from Seller's warranty of marketable title*]

4. The sales price of this apartment has been determined by agreement of both parties and is (*amount in writing*). A deposit of (*amount*) has been placed in an escrow account (*location*) by Buyer. The sales price will be paid by Buyer (*to whom, form of payment, schedule of payments*).

5. The BTI inventory cost of the unit is (*amount*) according to (*BTI document number*).

6. The expenses associated with execution of this document and the party responsible for their payment are listed below:

---

[52]Where party is a juridical entity the relationship of the party to the entity should be stated along with a phrase that the party has the authority to bind the entity.

	Amount	Responsible Party
Broker's fee		
Notary fee		
Registration		
Other		
_____		
_____		

7. The parties agree to execute this agreement in conformity with the Articles 163 (notarization) and 164 (registration) of the 1994 Russian Federation Civil Code. Buyer understands that he acquires property rights to the apartment when the present contract is notarized and registered with (*relevant department*). Buyer agrees to register this agreement with (*relevant department*) within (*number of days*) after execution of this agreement. Seller promises to forfeit his propiska to the apartment upon execution of this agreement.

8. Buyer understands that he is assuming all responsibility for paying property taxes, utilities and maintenance expenses on the property described in paragraph 1. Buyer agrees to notify the Tax Inspectorate and the REU of his purchase of the property described in paragraph 1 in order to update the official records of those departments.

9. Where a dispute arises between Buyer and Seller all efforts will be made through mutual discussion to reach an amicable settlement.

9.1 Any dispute between Buyer and Seller that is not amicably settled through mutual discussion may be submitted to negotiation or arbitration the results of which will be [*advisory or binding*]

[*parties may want to state here what entity will serve as the negotiator or arbiter or state who will select the negotiator or arbiter*]

9.2 In the event parties are unable to settle their dispute through negotiation or arbitration, either party reserves the right to pursue formal litigation.

10. This contract becomes effective from the moment of notarization. Buyer understands that he must register this contract with (*relevant department*) before his property rights are legally recognized by the state.

11. This agreement has been executed in four copies and copies distributed to Buyer, Seller, Notary and (*registration entity*).

[*Signatures of Buyer and Seller and Date*] [*Notary name, stamp and attestation*]

7.1 If the contract transferring ownership is not signed by [*same date as previous paragraph*] Investor may assess penalties against Developer in the amount of [*specify fixed amount or percentage, how accrued and cap, if applicable*].

7.2 If the contract transferring ownership is not signed within thirty (30) days of [*same date as in previous paragraphs*] Investor has the right to terminate this contract and demand 140% of it investment from Developer plus penalties as assessed in paragraph 6.1.

8. Investor has the right to sell or transfer shareholder rights granted him by the present contract only with the express permission of Developer. After sale or transfer of this contract to another investor (*hereinafter Subinvestor*), all financial responsibilities contained in paragraph 4 of the present agreement become the obligation of Subinvestor.

9. The expenses associated with execution of this document and the party responsible for their payment are listed below:

	Amount	Responsible Party
Notary fee		
Registration		
Other		
_____		
_____		

10. Any changes and additions to this contract shall be specified in a written agreement signed by both parties and attached as addenda to the present agreement.

11. The parties agree to execute this agreement in conformity with the Articles 163 (notarization) and 164 (registration) of the 1994 Russian Federation Civil Code.

12. Where a dispute arises between the Investor and Developer all effort will be made through mutual discussion to reach an amicable settlement.

12.1 Any dispute between Investor and Developer that is not amicably settled through mutual discussion may be submitted to negotiation or arbitration the results of which will be [*advisory or binding*]

[*parties may want to state here what entity will serve as the negotiator or arbiter or state who will select the negotiator or arbiter*]

12.2 In the event parties are unable to settle their dispute through negotiation or arbitration, either party reserves the right to pursue formal litigation.

13. This agreement becomes effective from the moment it is signed by both parties.

[*Signatures and date*]

Model Shared Participation Agreement

Date
City

1. (*Name*), hereinafter referred to as "Investor", residing at (*address*) and (*name of natural or juridical person*),[48] hereinafter referred to as "Developer" conclude the following contract:

2. The present shared participation agreement concerns the construction of a residential premises at (*address*) consisting of _____ square meters and _____ rooms and having the following characteristics

[*include here any appliances, fixtures or other features of the apartment that will become the property of the buyer*]

3. Developer, in accordance with rights granted by

include one(s) that apply:
- *the relevant city department granting authority to the developer to use shared participation arrangement*
- *the main investor/developer that has a contract with Developer to execute shared participation agreements with lower tiered investors*

grants Investor the right to receive in ownership the unit described in paragraph 2 of this contract.

4. Investor will finance the construction of unit referenced in paragraph 2 in the amount of (*amount written out*). The schedule of Investor's payments is as follows:

[*include date due, amount, form of payment, to whom and where payment should be made*]

4.1 Penalties for late payment shall accrue against Investor beginning at midnight of the fifth calendar day after payment[49] is due and not received.

4.2 For each calendar day of late payment Investor will be charged [*fill in fixed charge or percentage*].

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[48]Where the party is a juridical entity, this provision should make clear the relationship to the company of the natural person signing on behalf of the company and state that the natural person has the authority to legally bind the company.

[49]For example, if payment is due on the July 1, penalties will begin to accrue at 12:00 AM on the July 6.

4.3 Unless otherwise negotiated between Developer and Investor, Developer has the right to terminate this contract with Investor at midnight on the fifth date after payment is due and not received.

4.4 If Developer terminates this contract the termination must be in writing to Investor, specifying amount owed plus penalties. Investor will have seven (7) days from receipt of notice to make restitution of all payments and reinstate this contract.[50] If full payment is not made, Developer may terminate the contract and must return 140% of Investor's funds within seven (7) days of termination.[51]

5. Developer agrees to use Investor's funds exclusively for the construction of the premises described in paragraph 2. Where Developer is not itself carrying out construction, Developer promises to provide verification to Investor within ten (10) days of receipt of Investor's payment that the payment was forwarded to the entity carrying out construction of the premises described in paragraph 2.

6. Developer reserves the right to demand from Investor additional sums at the completion of construction to account for increases in construction costs due to inflation.

6.1 To determine the additional amount Investor is required to pay the parties agree to consult [*local pricing center*].

6.2 In the event Developer demands additional payment from Investor, the request for an additional shall in writing and the price increase verified by written proof from the [*local pricing center*] attached to the written request for additional payment.

6.3 Investor shall have twenty (20) days from receipt of the request for additional payment to make the payment to Developer. If payment is not made, the terms of paragraphs 4.3 and 4.4 of this agreement shall apply to terminate the contract between the parties.

7. Upon completion of construction the parties will execute an additional contract transferring property rights in the apartment described in paragraph 2 to Investor. This contract transferring property rights shall be executed in accordance with all relevant federal and local laws and procedures. This contract transferring property rights shall be executed no later than one month after receipt of the Act of the State Commission on Placing the Building in Operation and will take place at [*specify location*] no later than [*specify date*].

---

[50]For example, if notice is received at 1:50 PM on July 1, Investor has until 1:50 PM on July 8 to make restitution.

[51]For example, if termination is effective at 1:50 PM on July 8, return of funds must be made by 1:50 PM on July 15.

Model Listing Agreement

Date
City

1. I (*name*), hereinafter referred to as "Owner," employ (*broker name or company name*), hereinafter referred to as "Broker," to perform the following services:

[*list each of the services the broker will perform*]

2. Broker will perform the services described in paragraph 1 under the following terms (**check one**):

☐ Owner gives Broker **open listing** of the property, meaning that Owner retains the right to sell the property himself or retain another broker to sell the property. Only the broker who is the procuring cause of the buyer receives a commission.

☐ Owner gives Broker an **exclusive listing** of the property, meaning that Owner will retain no other brokers to sell the property, although Owner retains the right to sell the property himself without liability for paying Broker's commission.

☐ Owner gives Broker an **exclusive right to sell** the property, meaning Owner must pay Broker commission upon sale of property regardless of whether Broker, Owner or another broker sells the property.

2.1 The listing begins on (*date*) and ends at midnight on (*date*). The parties may extend the listing period by mutual, written agreement.

2.2 Broker agrees to use its best efforts to perform all of the services listed in paragraph 1.

3. The property referred to in paragraph 2 is located at (*address*) and consists of _____ square meters and _____ rooms and having the following characteristics

[*include here any appliances, fixtures or other features of the apartment that will become the property of the buyer*]

4. Owner warranties that he will convey fee simple ownership of the property described in paragraph 3. As proof of Owner's title, Owner promises to supply (or retain Broker to supply) a title search of the property.

4.1 Owner will not knowing misrepresent any feature or quality of the property to Broker or prospective buyer or fail to disclose any latent defect in the property that might violate the legal rights of the prospective buyer.

5. Owner agrees to pay Broker a commission of [*define the terms of the commission; if Owner is paying a percentage of the commission for each service described in paragraph 2 then a list of the services and their corresponding percentage of the total commission should be included here*]. Unless otherwise agreed, Owner will pay Broker's commission at time of closing and in no event later than midnight on the fifth day after closing.[47]

6. If Broker accepts earnest money for Owner the money shall be put into a separate account and held for Owner. If a prospective buyer who placed money in the escrow account defaults on the sales contract the deposit will first be paid to Owner to satisfy any expenses that he incurred in connection with the sales contract. Any remaining amounts may be paid first to Broker to satisfy any expenses incurred in connection with the sales contract, then to Owner.

7. Where a dispute arises between the Owner and Broker all effort will be made through mutual discussion to reach an amicable settlement.

7.1 Any dispute between Owner and Broker that is not amicably settled through mutual discussion may be submitted to negotiation or arbitration the results of which will be [*advisory or binding*]

[*parties may want to state here what entity will serve as the negotiator or arbiter or state who will select the negotiator or arbiter*]

7.2 In the event parties are unable to settle their dispute through negotiation or arbitration, either party reserves the right to pursue formal litigation.

[*Party signatures and date*]

[47]For example, if closing is on the July 6, the latest that the commission will be paid is midnight on July 11.

APPENDIX D

MODEL DOCUMENTS

CONTRACT

St. Petersburg _____
One Thousand Nine Hundred Ninety-Four
We, _____
residing at the address: _____
_____
hereinafter referred to as the "Seller" and _____
residing at the address: _____
_____
hereinafter referred to as the "Buyer",

enter into the Contract as set forth below:

1. The "Seller" shall sell, while the "Buyer" shall purchase the apartment situated at the address _____
2. This apartment belongs to the "Seller" on the basis of _____
_____
certified by _____
_____
and registered by the Design Inventory Bureau _____
of the city of St. Petersburg under Registry No. _____
3. The transferred apartment is situated on the __ floor of a __ story residential housing unit and is comprised of __ rooms with a total area of __ m^2 with a living area of __ m^2 and a kitchen of __ m^2, ____.
4. The inventory assessment of the apartment to be transferred costs ____ (____) rubles, as set forth on the receipt of the Design Inventory Bureau _____ of the region of the city of St. Petersburg of "_" ____ 1994, No. __ and registered with the Housing Committee of the Office of the Mayor of St. Petersburg based on Registry No. __ of __.
5. This apartment was sold for ____ (_____
_____) rubles paid by the "Buyer" outside the premises of the Notary Office.
6. This apartment shall be purchased by the "Buyer" for use in accordance with its primary purpose, i.e. as a residence.
7. The apartment to be transferred has not been sold, mortgaged, is not the subject of a dispute or under an injunction prior to this Contract.
8. Expenses associated with the process of entering into this Contract shall be borne in equal measure by the Parties.
9. The "Buyer" shall, at his own expense, be responsible for the repair and upkeep to the apartment and contribute amounts towards maintenance and upkeep to the common areas in proportion to the area occupied by the apartment.
10. The Notary has explained the provisions of Article 13 of the Law of the Russian Federation "On Property" and the provisions of Article 241 of the Civil Code of the Russian Federation to the Parties.
11. This Contract is drafted and signed in three copies, one of which shall be archived in the records of the Notary of the City of St. Petersburg, , with the two remaining copies issued to the Parties.

_____

"_" _____ 1994, I, ., Notary of the City of St. Petersburg, acting under License No. issued by the Department of Justice of the Office of the Mayor of the City of St. Petersburg of 23 April 1993, hereby notarize this Contract.

The Contract has been signed in my presence. The identity of the Parties has been established; their legal capacity has been verified and the ownership of the apartment to be transferred as well as the authority of the representatives have likewise been verified.

This Contract shall be registered with the Housing Committee of the Office of the Mayor of the City of St. Petersburg.

Registered in Registry No.

Fee Charged

Notary

CONTRACT
On the Sale of an Apartment

City of Moscow, seven July one thousand nine hundred ninety.

We the undersigned, , residing at apartment , No. , Moscow, and , residing at apartment , No , Moscow, enter into the Contract as set forth below:

1. I, , hereby sell to the apartmer to which I have a right of ownership situated at apartment , No. , Moscow.

2. The apartment consists of 2 rooms with a total usable floorspace of 42 (forty-two) m^2 including a living area of 21 (twenty-one) m^2.

3. I, , hold this apartment under a right of ownership as certified by th listing under

4. I, , shall sell said apartment in exchange for 15,000 (fifteer thousand) rubles, said sum to be obtained from the Buyer upon ratification of this Contract.

5. The shares for said apartment have been paid in full and are equal to 10,000 (ten thousand) rubles.

6. The Buyer shall be responsible for operation and repair of the apartment at his own expense and shall likewise be responsible for costs associated with technical maintenance and repair, including major (capital) repair of the entire building on a level comparable to the area occupied by the apartment.

7. The Notary has explained to the parties the provisions of Article 13 of the Law of the RSFSR "On Property in the RSFSR" and Article 241 of the Civil Code of the RSFSR.

8. Prior to executing this Contract, the apartment has not been sold to any party, has not been mortgaged, and is likewise not the subject of a dispute or seizure (lien).

9. shall bear all costs associated with the execution of this Contract.

10. A copy of this Contract shall be stored in the archives of the First Moscow State Notary Office (Pobrov Square, No. 6) with one copy issued to Mr. and one copy to Mr.

Signatures of the Parties

Certified Seal of the State Notary Office

TOILET _____
INBUILT FURNITURE _____
DOOR _____
WINDOW FRAMES _____
WINDOWS _____
ELECTRICAL FIXTURES _____
EXTERNAL FINISHING _____
LANDSCAPING OF THE ATTECHED TERRITORY _____

4 THE MEMORANDUN OF UNDERSTANDING SHALL BE EFFECTIVE SINCE THE MOMENT IT IS SIGNED THROUGH THE LIFETIME OF THE CIRTIFICATE ISSUED TO "THE BUYER".

5 THE UNDERSIGNED "BUYER" AND "SELLER" CIRTIFY THAT THE ABOVE CONDITIONS IN THE MEMORANDUM OF UNDERSTANDING ARE TRUE AND COMPLETE.

"THE SELLER" _____	"THE BUYER" _____
DATE _____	DATE _____
WITNESS _____	WITNESS _____
_____	_____

SHARED PARTICIPATION AGREEMENT

Presales agreement

~~MEMORANDUM OF UNDERSTANDING~~

DATE_____ NOVGOROD

THE MEMORANDUM OF UNDERSTANDING IS EFFECTIVE WITHIN THE FRAMEWORK OF THE PROGRAM FOR HOUSING CERTIFICATES FOR THE MILITARYMEN.

THIS MEMORANDUM OF UNDERSTANDING HAS BEEN SIGNED BETWEEN THE J/S COMPANY " ON BEHALF OF MR , CHAIRMAN OF THE BOARD, HEREINAFTER REFERRED TO AS " THE SELLER" ,

AND

(FIRST NAME, MIDDLE NAME, FAMILY NAME OF THE OFFICER)_____
RESIDING (ADDRESS)_____
PASSPORT (OR OTHER ID)_____,
HEREINAFTER REFEERED TO AS " THE BUYER".

1 THE "SELLER" UNDERTAKES THE FOLLOWING OBLIGATIONS

- TO ACCEPT " THE BUYER" INTO A SHARED PARTICIPATION FOR CONSTRUCTION OF _____ROOM APARTMENT NO _____ TOTAL SPACE _____SQ.M ADDRESS_____

- THE APARTMENT PRICE FOR THE MOMENT THE HOUSING IS TRANSFERRED TO THE "BUYER" INTO OWNERSHIP IS _____THOUSAND AMERICAN DOLLARS

- TO TRANSFER THE APARTMENT INTO OWNERSHIP OF" THE BUYER" ON (MONTH, YEAR)_____

- TO MEET THE REQUIREMENTS OF THE BTI AND THE NOTARY WHEN EXECUTING THE DOCUMENTS FOR TRANSFERRING THE APARTMENT INTO OWNERSHIP OF "THE BUYER".

2. "THE BUYER" UNDERTAKES THE OBLIGATION TO PAY THROUGH "NOVOBANK" THE COST OF THE HOUSING WHITHIN 3 DAYS AFTER "THE SELLER" HAS EXECUTED THE DOCUMENTS FOR TRANSFERRING THE APARTMENT INTO OWNERSHIP OF "THE SELLER" AND SUBMITTED THE RELEVANT DOCUMENTS INTO "NOVOBANK" THAT PROVIDES FUNANCING FOR THE PROGRAM.

3. BY THE MOMENT THE APARTMENT IS TRANSFERRED INTO OWNERSHIP OF "THE BUYER" IT SHALL HAVE THE FOLLOWING CHARACTERISTICS:

WALL COVERING _____
FLOOR COVERING _____
SANK IN THE KITCHEN_____
SANK IN THE BATHROOM_____
BATHTUB_____

TOILET_____
INBUILT FURNITURE_____
DOOR_____
WINDOW FRAMES_____
WINDOWS_____
ELECTRICAL FIXTURES_____
EXTERNAL FINISHING_____
LANDSCAPING OF THE ATTECHED TERRITORY_____

4 THE ~~MEMORANDUM OF UNDERSTANDING~~ Pre sales agreement SHALL BE EFFECTIVE SINCE THE MOMENT IT IS SIGNED THROUGH THE LIFETIME OF THE CIRTIFICATE ISSUED TO "THE BUYER".

5 THE UNDERSIGNED "BUYER" AND "SELLER" CIRTIFY THAT THE ABOVE CONDITIONS IN THE ~~MEMORANDUM OF UNDERSTANDING~~ Pre sales agreement ARE TRUE AND COMPLETE.

"THE SELLER"_____	"THE BUYER"_____
DATE_____	DATE_____
WITNESS_____	WITNESS_____
_____	_____

pay the remaining sum equal to the estimated value of one square meter, multiplied by floor space requested, with regard to deductions under Item 2.2, less advance, within 10 days from the date of drawing-up of documents required for obtaining housing

In this case, the amount of funds transferred in roubles by the Shareholder complies with the provisions laid down in Item 1.3.

2.2. Allocate 2 per cent for service rooms against vacation of construction site with regard to districts:

Dzerzhinsky 10%.

3. In case funds are not transferred prior to the specified time limit, the Shareholder shall pay to the Administration a fine at the rate of 0.05 per cent of non-transferred sums per each day of default but not more than per 20 days.

4. In case the Shareholder fails to transfer funds or transfers funds not in full within the time exceeding 20 days, the Administration strikes him off the list of shareholders or reduces his share and finances the vacant share from budget sources or transfers this share to other shareholder.

5. Special terms:

5.1. The Administration shall grant housing under the Agreement within 10 days from the date of acceptance of house.

6. The Shareholder is entitled to refuse the share having notified the Administration not later than one month before the date of his withdrawal from the list of shareholders.

7. Alterations may be introduced into this Agreement only by common consent of the parties.

8. The Agreement is made in two copies, one copy for each Party, both copies being authentical.

9. The Agreement comes into force from the date of its signing by the Parties and is valid till full settlement of funds transferred by the Shareholder.

10 Legal addresses of the Parties:

Mayor's Administration of city of Yaroslavl:
150000, Yaroslavl, Andropov st., 6
special account 747801 at Commercial joint-stock bank "Region"
MFO 47888700, correspondent account 700161700
Deputy Mayor of city of Yaroslavl
_____ A.S.Samusev

Shareholder:

AGREEMENT No ____
ON TRANSFER OF SHARED SOURCES OF PARTICIPATION IN HOUSING CONSTRUCTION IN 1994-1995

City of Yaroslavl
"_____" 1994

The Mayor's Administration of city of Yaroslavl, hereinafter referred to as the "Administration", represented by Deputy Mayor A.S.Samusev, acting on the basis of the RF Law "On Local Self-Government", on the one part, and citizen _____ _____, hereinafter referred to as the "Shareholder", on the other part, have concluded this Agreement to the effect that:

Subject of the Agreement

The Shareholder entrusts and the Administration undertakes the commitment to gather and invest shared sources of participation in housing construction.

Obligations of the Parties

1. The Administration shall:

1.1. Gather funds from shareholders according to their share of participation in housing construction.

1.2. Distribute funds among contracting organizations and allot to the Shareholder housing in the form of ____-room apartment in house No. ___ _____ sq.m of total floor space in accordance with transferred funds, with regard to normative deductions, within 6 months from the date of conclusion of the Agreement.

1.3. Establish the estimated value of one square meter of total floor space in the amount of 65 thousand roubles, that is equal to 310 US dollars for the date of conclusion of the Agreement.

1.4. Return unused funds to the Shareholder.

2. The Shareholder shall:

2.1. Make payments for housing at the following stages:

pay advance in the amount of 500 thousand roubles within 10 days from the date of conclusion of the Agreement;

Services Contract No. ____

St. Petersburg "_" _____ 199_

The Agency Closed Joint Stock Company, hereinafter referred to as the "Agent," in the person of _____, acting on the basis of _____, and _____, hereinafter referred to as the "Client," as party of the second part, enter into the Contract as set forth below:

1. Subject of the Contract

1.1. The Agent shall be obligated to provide the Client with the following services _____ _____ _____ in exchange for a fee.

1.2. The Client shall be obligated to provide payment for the services provided by the Agent in amounts and in accordance with the schedule stipulated herein.

2. Obligations of the Parties

2.1. The Agent shall be obligated to provide the services stipulated under Clause 1.1. of the Contract, utilizing Agent's knowledge of existing market conditions and Russian law currently in effect.

3. Effective Date and Term of the Contract

3.1. The Contract shall become effective upon signing by both parties and shall remain valid through _____.

3.2. The Contract may be nullified prematurely in the event of mutual consent between the parties formulated in a protocol.

4. Settlement Among the Parties

4.1. The compensation provided for services of the Agent shall be _____ _____ in the ruble equivalent amount. Payment for Agent services shall be executed as _____ _____ within the schedule _____. The payment date shall be the date said amounts are deposited in the settlement account or the cashier's office of the Agent.

5. Additional Terms

5.1. All disputes between the parties shall be resolved through negotiation. In the event that no agreement is reached, the dispute shall be handed over for resolution by the public or arbitration tribunal of St. Petersburg.
5.2. This Contract is drafted in two copies with identical legal force with one copy for each party.

6. Addresses and Signatures of the Parties

Agent

[seal]

Client _____
_____
_____
Address: _____
_____
Passport _____
_____
Telephone _____

[seal]

Novgorod

_ 199

MODEL CONTRACT

on the search of options for housing sale-and-purchase services

_____, hereinafter referred to as _____, by representative _____ _____, residing at: _____ _____ passport: series _____ No _____ issued _____ _____ acting under _____ on the one hand, and company by representative Director , acting under "Charter", on the other hand, have concluded the present Contract for the following:

1. SUBJECT OF THE CONTRACT

1.1 . Company undertakes the search of a buyer/seller, hereinafter referred to as _____, for sale-and-purchase of _____ on conditions stipulated in the present Contract.

2. TERMS AND CONDITIONS

2.1. Company shall render services on drawing up _____for _____ _____ within one day upon receiving from _____ confirmation of the conditions under item 1.1 .

2.2. _____ pays Company for the services rendered in the time and amount stipulated in the present Contract.

2.3. The services undertaken by Company shall be considered rendered upon signing of an agreement by "Seller" and "Buyer".

3. TERMS OF PAYMENT

3.1. For the services rendered under items 1.1 and 2.1 the "Seller"/"Buyer" shall pay the amount of _____ _____

3.2. Payments are to be effected within _____ days of the date of signing the agreement -

120

on the sales of the apartment by "Seller" and "Buyer" by bank trasfer of the amount under item 3 1 to the account of Company.

4. MATERIAL LIABILITY

4.1. The parties shall be answerable for any breach of the terms and conditions of the present Contract in accordance with the current legisation.

4.2. In the event of delay in payment for _____ services rendered by the "Seller" is to pay a fine in the amount of 1% of the value of intermediary services for each day of delay, but not more than 8% of the total value.

5. ADDITIONAL CONDITIONS

5.1. The present Contract comes into force upon signing and shall be valid until fulfillment by both parties of all obligations under the Contract.

5.2. bears no responsibility for the agreement between the "Seller" and the "Buyer".

6. REQUISUTES OF THE PARTIES

Company

173000, Novgorod,

_____

_____

_____

Company

_____

Signature

_____

Signature