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**TRIP REPORT**

**Issues Affecting Finalization of the  
Law on Immovable Property Registration**

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ATTACHMENT B: Draft Law of the Republic of Belarus on Registration of Rights to Immovable Property

## **ABSTRACT**

This is a report prepared by Mr. Richard Gaynor, ICMA consultant to Kyrgyzstan under MDM Delivery Order #19. It discusses his February 1997 trip and outlines his recommendations for finalizing the Law on Immovable Property Registration in the Republic of Kyrgyzstan.

## **INTRODUCTION**

In February 1997, ICMA consultant Richard Gaynor traveled to Kyrgyzstan to work on revising the draft law on Immovable Property Registration. Based on his work with Anatoly Ivanovich Budanov and members of the PMG, he has written the following report that addresses several issues that, in his opinion, need to be resolved before the finalization of the Registration Law and the national implementation of the registration system, and has made recommendations thereon. All references made to the "draft law" refer to the draft law on Immovable Property Registration written February 26, 1997.

### **1 INSTITUTIONAL FRAMEWORK FOR REGISTRATION SYSTEM**

Clarification of institutional responsibilities and a plan for interagency cooperation will be critical to the successful implementation of the new system. They will also be conditions to future World Bank funding. Institutional issues can be very difficult to resolve. Failure to resolve them has caused long delays in World Bank projects in Russia, Kazakstan, and elsewhere. Although the draft registration law purports to resolve the institutional issue through the creation of a new national agency ("Gosregister"), the following issues remain:

- **Lack of Government Support**

It does not appear that the necessary work has been done to build consensus within the government for establishment of a new agency. The inter-ministerial council endorsed the idea, but that endorsement was over a year ago and may no longer be as persuasive within the government now that many members of the council have changed positions or left state service. The PMG needs to continue the work of developing a political strategy and cultivating supporters, as the creation of a new agency will engender opposition and could seriously delay passage of the law, funding from international donors, and implementation of the system.

One of the first questions that will be asked of the PMG will be: "why should the Kyrgyz Republic spend money to set up a new agency when existing agencies already perform registration functions, and could be adopted to operate the new system?" This is an extremely important question considering the scarcity of resources to operate existing government agencies and pay existing government employees. The PMG will need to present a plan that demonstrates how, and at what cost, the registration offices will be established and staffed.

- **Staffing**

The issue of staffing was one of the issues that delayed the World Bank project in Kazakstan. Before proceeding with the project, the Bank wanted the Government's commitment to staffing the registration offices. The Government, on the other hand, was reluctant to commit to creating new government positions while it was trying to reduce the size of the government bureaucracy and payroll by eliminating other positions. The Government of the Kyrgyz Republic will presumably have similar concerns about increasing its payroll obligations. Kazakstan appears to have resolved this issue by moving BTI into the

Ministry of Justice, which has overall responsibility for implementing the registration system. This same strategy is not necessarily recommended in Kyrgyzstan, but is a plan whereby the PMG would be able to demonstrate no net increase in government staffing would make its proposals much more appealing and defensible with the government. Needless to say, if the plan involves something as dramatic as a realignment of BTI, the political foundation needs to be laid.

- **Clarification of Terms**

Another concern with the February 26 draft is that it proposes dual subordination of "city, rayon" registration offices -- they would be subordinate both to Gosregister and to local city administrations. (See Chapter 2 of the Law.) While dual subordination exists in other agencies, it sometimes results in confusion of authority and budgetary problems. Perhaps the idea should be re-examined. If the PMG eventually decides to recommend dual subordination, Chapter 2 of the law should be revised to describe as clearly and specifically as possible the respective responsibilities and authority of Gosregister and the local administrations. Without a clear delineation of authority and responsibility, the registration system is bound to face many of the problems being encountered by other agencies with dual subordination. Regardless of the subordination structure, the registration system should have its own budget authority and should retain the right to administer funds generated by the system. Financing of the system is discussed in a separate section below.

On a relatively minor note, the term "city, rayon organs" used in the draft law should be clarified. The members of the PMG understand what is meant by the idea, but it may not be clear to other readers of the law. If it means that in cities, city offices would be established, and in rural areas, rayon offices would be established, the law should say that more explicitly.

- **The Role of PMG**

Another institutional issue to be addressed is what role, if any, the PMG will have once the pilot project ends and registration offices begin to open. That issue need not necessarily be addressed in the law; however, it will be a question asked by members of Parliament and the Government.

## **2 TRANSITION TO NEW SYSTEM**

### **Process of Implementation**

Closely related to institutional issues are issues relating to how the new system will be phased in and will replace existing registration mechanisms. The February 26 draft addresses this issue much more clearly than previous drafts. It basically requires Gosregister to develop a plan for the gradual opening of registration offices nationwide. Until an office is opened in any given geographic area, the old system remains in place.

Once an office is equipped and the staff is selected and trained, the general director of Gosregister declares it officially opened and it begins the first registration process within its jurisdiction. The first registration process includes a 90 day period, during which provisional Registration Index Maps and registration cards are available for public review and comment. At the moment an office opens it becomes the sole agency responsible for registration. The draft should probably be revised to state more explicitly that once a new office is opened: (1) registration in other agencies is no longer required, or permitted; and (2) the registration law supersedes all other legislation requiring registration in other agencies.

### **Matters for Clarification**

The registration law should list specifically all such legislation, or parts of it, that will be superseded. As an example, the Decree of the Government on Marketing of Land Rights and Agricultural Credits, dated 25 November 1996, authorizes the State Agency on Land Management and Land Resources to begin registration of land use rights. Once a registration office is opened in any given geographic area, the registration activities of the State Agency on Land Management and Land Resources will terminate and the section of the 25 November 1996 Decree that authorizes its registration activities will be superseded by the registration law. If the registration law does not address this issue explicitly, there is bound to be confusion about which registration system is in effect.

Similarly, legislation that authorizes the registration activities of BTI, the State Property Committee, Municipal Property Departments, City Architect Offices, and village governments should be listed in and explicitly superseded by the registration law.

In describing the agencies whose registration activities are superseded, the law should carefully differentiate between registration and other activities conducted by existing agencies. One way to accomplish this in the law is to differentiate between decisions on initial allocation of immovable property rights on the one hand, and secondary transactions regarding immovable property rights, on the other. Existing agencies would remain responsible for initial allocation decisions (as well as their other non-registration activities), but the new registration offices would assume responsibility for registration of secondary transactions involving immovable property rights. For example, the State Property Committee would retain responsibility for privatization of state property. Similarly, the State Agency on Land Management and Land Resources and City Architects Offices would remain responsible for allocation of land use rights within their jurisdictions.

Another issue that requires additional elaboration in the law is the treatment of transactions that occur during the period between the opening of a new registration office and the end of the public display period. The draft law requires all such transactions to be registered in the new registration office. Such transactions apparently would be recorded on the provisional registration cards for the affected immovable property units. Those provisional registration cards would then go through the public display and comment process like all other cards. The obvious problem with this procedure is that buyers and others dealing with the system would go through a fairly lengthy period of uncertainty until the end of

the public comment period. (The public comment period is 90 days, but the period between the opening of the office and the beginning of the public comment period is undefined.) The mechanics of this process need further elaboration. Maybe there is a solution being used in Albania that could be used here as well.

### **3 STATE GUARANTEE OF TITLE**

There is a fundamental decision to be made about whether the registration system will be a document recordation system (i.e., one in which the state is going to record documents but not guarantee the status of title) or a registration of title system (i.e., one in which the state is going to guarantee the status of title). If the state is going to guarantee title, the nature and extent of the guarantee need to be determined.

Language was introduced in the February 26 draft on the assumption that the system would provide state liability for damages resulting from omissions, mistakes, etc. of the registration offices. The draft requires establishment of an assurance fund to provide a source of funds to support the state guarantee. These provisions may need to be deleted or refined depending on how the PMG resolves the issue of whether the system will include some form of state guarantee. It may be premature now, but at some point actuarial work should be done to begin to estimate the funding needs of the assurance fund.

### **4 FEE STRUCTURE AND FLOW OF FUNDS**

Regarding the fee structure and the flow of funds, the following questions must be addressed:

- Will there be flat registration fees (tied only to the number of pages submitted for registration, or some other factor), and/or will there be transfer tax-type fees (tied to the value of the immovable property unit)?
- If there will be fees based on value, how will value be determined? Will the value have implications outside the registration system (for example, for real estate taxes, or capital gains/income taxes), or will they only be used to determine transfer taxes?
- If fees are based on value, and if the state is going to guarantee title, will the value constitute a limit on the state's liability for damages? This would allow users of the system to make their own declarations of value, effectively putting them in the position of deciding how much title insurance they want to purchase for their property.
- What are the mechanics of fee collection?
- How will revenues flow within the system, especially if the dual subordination structure is maintained? Will local registration offices retain authority over funds? Will all funds stay in the registration system? Will funds go to Gosregister and then be re-allocated among local offices as needed?

## **5 WHEN DOES A DOCUMENT ACQUIRE LEGAL VALIDITY?**

The following options were discussed:

(1) a document becomes legally binding once it meets the requirements of the civil code (for example, it is signed, and notarized), regardless of whether it is registered, but it obtains the protection of the registration system only when it is registered.

(2) a document becomes legally binding only at the moment of registration.

Consider these two options in light of the following hypothetical:

Buyer and Seller sign a purchase and sale agreement that is notarized and meets all applicable legal requirements. The agreement obligates Seller to convey his property to Buyer one month after the agreement is signed. Buyer and Seller do not register the agreement, but Buyer pays Seller a down payment. Instead of conveying the property to Buyer, Seller breaches the agreement and conveys the property to a second buyer, who registers the conveyance.

Under option I (which reflects the law in most countries, and that reflects existing law in Kyrgyzstan), Buyer would not have the protection of the registration system. The second buyer would be protected by the registration system because he registered his purchase, whereas Buyer and Seller did not register their purchase and sale agreement. But, Buyer would still have a civil cause of action for damages against Seller. In other words, Buyer could bring a suit in court to recover damages from Seller because his agreement with Seller would be a binding legal agreement notwithstanding their failure to register. Under option 2, Buyer would have no recourse against Seller. His legal rights against Seller would not exist because the agreement between Buyer and Seller was not registered.

Again, option I describes the system in most countries and, most likely, the existing system in the Kyrgyz Republic. Adoption of option 2 would require amendments to the Civil Code and other legislation.

## **6 INTERACTION OF THE REGISTRATION SYSTEM WITH THE NOTARY SYSTEM**

There were lengthy and difficult discussions regarding the interaction between the new registration system and the notaries. The common goal was to design the system to be as efficient and friendly as possible for users. Ideally, users would go to only one office to accomplish a transaction.

One reason for the difficulty of the discussions may be the different ways in which the group characterized the notary function. Some members of the PMG characterize the notary function as "registration." Since they view the notaries as registering transactions, they want to eliminate the notaries and replace them with "registration" under the new registration system. Eliminating duplicate

functions is a very worthwhile goal. On the other hand, notaries perform at least two important sub-functions, that would not be characterized as "registration": (1) they verify the identity of the parties to a document; and (2) they certify the "legality" of the document (that is, they review the content of the document to assure that it meets applicable legal requirements and they verify the legal capacity of the parties, and absence of duress, fraud, and mistakes).

While the eventual consolidation of the notary function within the new registration system may be feasible in the long term, it may be a mistake to try to do so in the initial phases of implementation of the system. When registration offices are first opened, employees will not have the legal expertise to review documents and verify their legality. If this function of notaries is eliminated and not replaced with a similar service provided by the new registration system, it will essentially force people to hire their own attorneys to verify that documents meet all applicable legal requirements. This would be a mistake in the initial phase of implementation because it is unlikely that most people, especially those in rural areas, will seek or have access to competent legal advice. Members of parliament and the government would reject such a dramatic change from the existing system. Perhaps most importantly, any recommendation to eliminate the notary function is likely to trigger vigorous opposition from the notaries and the Ministry of Justice, whose support is needed to pass the law.

One compromise to consider is to let the notaries retain their role, but make sure it is narrowly defined (if it is not already) to include only the verification of identity and legality of documents. In other words, to the extent necessary the registration law would clarify that the notaries do not conduct "registration." In addition, the efficiency and convenience of the system could be increased by requiring notaries to locate in the same buildings and to keep the same hours as registration offices. Notaries could even sit in the registration office, although they would also have to be available to notarize transactions that do not involve immovable property. This compromise approach would lessen the burden on registration offices and would lessen the likelihood of active opposition to the system by the Ministry of Justice.

If the PMG decides nonetheless, to recommend the elimination of notaries, appropriate amendments to the Civil Code and other legislation that require notarization would have to be introduced.

## **7 REGISTRATION OF RIGHTS IN MULTIFAMILY AND OTHER COMMON OWNERSHIP BUILDINGS**

Although the proposed registration cards have a space in which shares of ownership will be indicated, there seem to be some issues regarding common ownership situations that require additional consideration. One is how condominium or other common interest declarations (whether they are called foundation deeds or something else) will be registered and where they will be kept. Will copies be kept in the registration folders for all units within the building (a cumbersome solution) or will there be a method for storing them elsewhere but referencing them on the registration card?

Another issue is whether the registration offices will keep a list of all owners within a building. A list is a nice convenience for users of the system, but updating it for every transaction is a cumbersome and

costly process that may want to be avoided, especially while the system is paper-based. If a list is going to be kept, the details of where it is going to be kept and how it is going to be updated need to be thought through. In addition, the law should state that any such list is only for informational purposes and the registration card is the only legally binding and valid record of title.

## **8 PROCEDURES FOR PROCESSING TRANSACTIONS**

The process of developing maps and designing the registration cards and folders have received the bulk of the attention during the initial phases of the pilot project. Now that the preliminary designs have been completed, some resources should be shifted from filling out registration cards to clarifying how the system will process transactions. The skeleton of a transaction manual should be developed, including lists of types of transactions and descriptions of how they will be registered on the registration cards.

## **9 OVERRIDING INTERESTS**

The concept of overriding interests (i.e., interests that have priority whether or not they are registered) needs to be clarified in the law. The draft law establishes (crudely) that registration is not required for: (1) generally applicable laws and regulations (like health and safety or zoning laws); or (2) rights of way for public utilities, etc. that exist as of the time of first registration. Rather than saying these "overriding interests" do not need to be registered, the law should say they have priority over registered rights.

Another issue to consider is whether the first registration process will include registration of rights and restrictions relating to existing roads and public utilities that cross privately owned buildings or land that is subject to private use rights. The process of defining such roads and public utilities and putting them on registration cards is something that should be experimented with during the pilot phase. The PMG should attempt to identify where the necessary documents are kept (for example, the city architects' offices) and to quantify the time and cost of the task. That information will allow the PMG to make an informed decision about whether to register such interests during the first registration process. Regardless of what is decided regarding the first registration process, the law should be clarified to require registration of any utility easements created in the future.

There may be additional overriding interests, like tax liens, that should be added to the list of rights/restrictions that obtain priority over registered rights.

## **10 TERMINATION OF LEASES, MORTGAGES, OPTION CONTRACTS AND OTHER TEMPORARY INTERESTS**

The law is a little vague on what is required for termination of temporary interests (like leases, mortgages, and option contracts) on the registration card. Perhaps it is best to leave this vague in the law, but the PMG should start thinking about how specific cases will be addressed.

## **11 SURVEY PLANS**

The law is pretty ambiguous about when survey plans are required. Is the general rule going to be that survey plans are only required when boundaries are being "fixed", or when parcels are being merged or subdivided? Or, will existing survey plans be used in the first registration process and, if they are, will they be referenced on the registration card and kept in the registration folder?

## **12 MAPPING/NUMBERING OF IMMOVABLE PROPERTY UNITS**

The draft law specifically ties the registration numbering system to administrative boundaries. (See Article 18.) This raises the undesirable possibility that identification numbers would have to be changed as administrative boundaries are changed. Deleting references in the law to administrative boundaries to avoid this possibility.

During the discussions of the draft, two other mapping/numbering systems have surfaced: the "COATO" system (referenced in Article 18 of the draft) and the cadastral numbering system for land. It is unclear whether these systems have advantages over the present one. In any case, no commitments in the law should be made (like the one in Article 18, paragraph 6, to keep the registration numbering system "consistent" with other systems) unless they can be kept.

There should be more general language in the law and detailed numbering and mapping procedures should be left for regulations. The law should include only general statements about the Registration Index Map, like the following language based on the draft Belarusian law (see **Attachment B**):

### **Article \_\_. Registration Index Map**

1. As an aide to users of the registration system the registration organ shall maintain a map to be known as the Registration Index Map. The Registration Index Map may be divided into separate sections or blocks that are portions of the land under the jurisdiction of a registration organ. The Registration Index Map shall depict at a minimum all land parcels under the jurisdiction of the registration organ; the approximate locations of any objects located on the land parcel; and the identification numbers of the immovable property units depicted on the map.
2. The Registration Index Map is an aide and the boundaries or locations of immovable property units indicated thereon are approximate only, and in the case of a conflict between the information depicted on the Registration Index Map and the information contained on registration cards, the information contained on registration cards shall govern.
3. The registration organ may at any time prepare a new Registration Index Map or portion thereof, omitting from the map any matters that have become obsolete.

In addition, the law could state in general terms that each immovable property unit shall be assigned a unique identification number and that the identification numbers for all immovable property units shall

be shown on the Registration Index Map (except for numbers of separate premises within buildings, that may be shown on separate lists indexed to the Registration Index Maps).

### **13 CERTIFICATES OF TITLE**

The draft law does not contemplate the issuance of certificates of title. In other words, under the draft law the state would not go through the process of issuing certificates like gos akts to all holders of land rights. Instead, holders of land rights or owners of buildings would, at their request, be provided with a certified copy of the registration card as evidence of the status of title. This approach is cheaper and eliminates problems relating to lost or stolen certificates. On the other hand, people in Kyrgyzstan are used to gos akts and similar documents and may not feel comfortable with certified copies of the registration cards. If members of the PMG decide certificates are necessary, the form of certificate will have to be designed and provisions should be added to the law to address issues relating to lost certificates and the legal validity of certificates. In any case, the law should probably address the continued validity and importance of existing gos akts and other certificates.

### **14 FORMS IN WHICH INFORMATION WILL BE GIVEN**

Even if certificates are not issued, there will have to be some clarity on the form in which information will be provided to the public.

### **15 NUMBER OF DOCUMENTS TO BE SUBMITTED**

The draft law requires the submission of the original document and one copy. The original is returned to the applicant and the copy is filed in the applicable registration folder. The operational experts should determine how many copies should be submitted and the questions of whether the original is held by the registration office or returned to the applicant. In any case, PMG may want to require submission of more than one copy if a document affects more than one immovable property unit. Consideration should be given to how registration offices will verify that copies are true and accurate copies of the original. Is that something a notary will do, or will that be done by the registration office?

### **16 EASEMENTS**

The draft law requires registration of easements on the registration cards for both the parcel benefited by the easement and the parcel burdened by the easement. The easement would presumably be registered in the encumbrance section of the burdened parcel. Consideration should be given to how easements will be registered on the registration card for the benefited parcel. They could logically fit in either the property description section or the rights registration section.

### **17 DISPUTE RESOLUTION**

The draft law requires the establishment of special commissions under local administrations to resolve disputes involving immovable property. The law also provides that disputes involving rights to immovable property must be submitted to the special commissions before they can be heard by a court. Similar commissions already exist to resolve land disputes. Needless to say, it is not necessary to create new commissions if existing commissions would be capable of doing the job. Further research needs to be done on the legal authority of these commissions and how they work in practice to make sure they suit the needs of the registration system. If it is decided to use existing commissions to address registration issues, that should be made explicit in the law.

**ATTACHMENT A: Law on State Registration of Rights to Immovable Property**

Draft dated 26 February 1997

## **LAW ON STATE REGISTRATION OF RIGHTS TO IMMOVABLE PROPERTY**

The present Law establishes the legal basis for the development and operation of a unified system of registration of rights to immovable property that shall be effective on the whole territory of the Kyrgyz Republic. The purpose of the registration system shall be to provide protection of registered rights to immovable property and to facilitate development of immovable property markets. The present Law implements the registration system contemplated by the Civil Code (including Articles 24, 25, 180, and 265), and other legislation of the Kyrgyz Republic.

### **Chapter I. General Provisions**

#### **Article 1. Terms and Definitions**

- 1. State Registration** - is the procedure of recording by the registration organ according to the procedures established by the present law, the right of ownership and other rights to immovable property, any restriction of these rights, origination, transfer and termination of these rights.
- 2. Immovable Things (Immovable Property, Immovables)** - are land plots, areas of mineral resources, detached water objects, and all that is firmly connected with earth, that is, objects which cannot be transferred from one place to another without inflicting damage disproportionate to their purpose, including forests, perennial plants, buildings, improvements, etc.
- 3. Immovable Property Unit** - is a land parcel, an apartment or any other unit of immovable property that is separately described (that has separately established boundaries) on the registration index map, and may be owned separately from other units under legislation of the Kyrgyz Republic.
- 4. Registration System** - is a unified system of registration of rights to immovable property units.
- 5. Registration Organ** - is a state body authorized by the Government of the Kyrgyz Republic to register rights to immovable property and to organize the activities of the registration system.
- 6. To Register** - is to make a record on a registration card (state register) regarding the origination, modification, termination or existence of rights, and restrictions to them to a immovable property unit.

- 7. Registration Card** - is a card which is kept for each immovable property unit.
- 8. Registration Rayon Map** - is a map for a registration rayon on which all registration sectors are shown.
- 9. Registration Index Map** - is a map or series of maps on which each immovable property unit has a unique identification number assigned according to established procedures.
- 10. Identification Number** - is a unique registration code assigned to an immovable property unit according to the procedures established by this Law and which is not repeated on the territory of Kyrgyz Republic and is preserved as long as the unit exists.
- 11. Proprietor (user)** - is the person or legal entity whose name or title is registered under this Law as the owner (user) of an immovable property unit.
- 12. Immovable Property Transaction** - is an action of persons and legal entities aimed at establishing, changing or terminating rights to an immovable property unit.
- 13. Encumbrances** - are limitations of rights to own, dispose, or use an immovable property unit, including rights of third parties (lease, collateral, mortgage, easements, transfer of rights or obligations under contractual obligations, decisions of court on seizure of property, and other restrictions established by legislation) restricting rights of an immovable property owner (user). Encumbrances include any agreement among owners (users) of immovable property intended to commit such owners (users) to contribute financially to the common maintenance of immovable property.

## **Article 2. Objects of State Registration**

The objects of state registration are rights and encumbrances to immovable property units.

## **Article 3. Subjects of State Registration**

The subjects of state registration of rights under this Law are the holders of rights to immovable property units, including citizens and legal entities of the Kyrgyz Republic, foreign citizens and legal entities, as well as persons without citizenship.

## **Article 4. Rights That Must be Registered**

Registration is required for:

- 1) ownership right;
- 2) right of economic management;
- 3) right for operational management;

- 4) inheritable life tenure;
- 5) use rights without fixed terms (permanent);
- 6) rights created by mortgage or pledge;
- 7) temporary use, lease or sublease for a term of six months or more;
- 8) servitudes;
- 9) design construction and use restrictions applicable to a specific immovable property unit, other than such restrictions that are applicable to immovable property generally and are contained in legislation and regulations of the Kyrgyz Republic;
- 10) rights arising from judgments of courts or arbitration courts;
- 11) rights to natural resources according to the list established pursuant to legislation of the Kyrgyz Republic;
- 12) other rights which are now or in the future required to be registered under the Civil Code and other legislation of the Kyrgyz Republic.

#### **Article 5. Rights That May Be Registered**

A preliminary contract to purchase a right to immovable property, an option to purchase a right to immovable property, or a preferential right to purchase a right to immovable property may be registered under this Law at the option of the parties to the contract, option or preferential right. Any other legally established right to immovable property that meets the requirements of this Law may be registered.

#### **Article 6. Rights and Restrictions Which Are Not Subject to Registration**

The following rights and restrictions are not subject to registration:

1. restrictions which work as basic rules and prohibitions (on health protection, public security, environmental protection, etc.) and are established by legislation; and
2. rights of access to electric power lines, telephone and telegraph lines and poles, pipe lines, and geodesic points existing as of the date a registration organ is declared opened, and other rights determined by public needs.

#### **Article 7. Required Registration and Consequences for Delay**

1. Any contract or other document affecting rights for which registration is required shall be presented for registration no later than thirty days from the time the contract or other document is executed.
2. Where a document is presented more than thirty days after the date of execution of the document, then, in addition to the registration fee, an additional fee in an amount determined by the Government of the Kyrgyz Republic shall be payable.
3. If any person or legal entity intentionally fails to submit any document affecting rights for which registration is under this Law or other legislation of the Kyrgyz Republic, the

Registration office should by notice in writing order such person to present such documents for registration, and thereupon the registration fee and any additional fee shall become payable by such person whether the document is presented for registration or not. Failure to register shall also have the consequences set forth in the Civil Code, this Law, and other legislation of the Kyrgyz Republic.

## **Chapter 2. Organization of the Unified State System of Registration of Rights to Immovable Property**

### **Article 8. Administrative Structure of the Organs of the Registration System**

1. The state system of registration organs shall consist of a republican administrative organ and rayon, city registration organs.
2. The state registration organ under the Government of the Kyrgyz Republic (Gosregistr) shall be a republican administrative body for registration of rights to immovable property.
3. Rayon and City registration organs shall be rayon and city departments under local administrations, which are legal entities subordinate directly to Gosregistr under the Government of Kyrgyz Republic.
4. Activities of organs of the registration system shall be performed according to regulations developed on the basis of the present Law and approved by the Government of the Kyrgyz Republic and in accordance with procedures developed by Gosregistr.

### **Article 9. State Registration Agency Under the Government of the Kyrgyz Republic (Gosregistr)**

1. The Government shall appoint a General director of Gosregistr and a deputy, who shall administer the registration of rights to immovable property throughout the Kyrgyz Republic.
2. The General director shall be authorized to make decisions on staff-organizational, financial, personnel and other issues in accordance with the approved budget, along with development and approval of instructions and recommendations not contradicting this Law and other legislation of the Kyrgyz Republic.
3. In the absence, for whatever reason, of the General director or Gosregistr, the deputy may exercise any of the powers vested in the General director by this Law.

### **Article 10. Rayon, City Registration Organs**

1. Rayon, city registration organs shall be created within local rayon/city government administrations and shall operate in each registration rayon.

2. Administration of a registration organ shall be performed by the head of the office appointed by the General director of Gosregistr upon agreement with the head of the local government administration.
3. The head of a registration organ shall be responsible to the general director of Gosregistr and to the local government administration for the timely establishment and further operation of the unified state registration system and for other aspects of the administration of the registration organ in his registration rayon.
4. Any right to immovable property must be registered by the registration organ in the rayon or city in which the immovable property is located, and any attempt to register the rights elsewhere shall be legally ineffective.
5. There shall be a seal for each registration organ. Every document issued by the registration organ that affects a registered right or encumbrance shall contain its seal.

#### **Article 11. Powers of Officers of the State Registration System**

Officers of the registration system exercise the following powers in addition to any other powers conferred on them by this Law:

1. Require any person or legal entity to produce any document relating to a right, subject to registration, in question, and that person shall be obligated to produce such document.
2. Summon any person to appear and give any information or explanation or a document regarding a right to immovable property, and that person is obligated to provide the abovementioned.
3. Suspend registration of right to immovable property if any document (contract, certificate, plan of an immovable property unit, etc.), information or explanation required under this Law is withheld.
4. With the authorization of the General director or Gosregistr, require a person who presents incorrect information to pay to the registration organ the expenses which the registration organ incurs in the process of correcting that incorrect information.
5. Issue certified (verified) copies of available registration documents and perform other information services to any person or legal entity who requests such copies and pays all applicable fees.

#### **Article 12. Requirements of Officers of the Registration System**

1. Registration of rights to immovable property is a state activity. Officers of the registration system cannot be involved in any activities aimed at making private profit as a

result of their position, and they must perform their duties according to legislation of the Kyrgyz Republic.

2. Officers of the state registration system shall be persons with higher education or secondary-professional degrees in legal science, geodesic science, land surveying science, records management or computer science, and have at least five years experience in the practice of his or her profession.

### **Chapter 3. Documents of the Registration System**

#### **Article 13. Basic Documents of the Registration System**

1. The basic documents of the registration system shall be the following:

- a) registration maps;
- b) registration cards;
- c) registration folders; and
- d) registration journals.

2. The basic document of the registration system may be in paper or electronic (computer, diskette, etc.) format.

3. Forms of the abovementioned documents shall be approved by the Government of the Kyrgyz Republic.

#### **Article 14. Registration Maps**

1. Registration maps consist of registration rayon maps and registration index maps.

2. The boundaries and geographic location, and numbers of registration sectors shall be shown on registration rayon maps.

3. For each registration sector one or a series of registration index maps may be maintained. If there is more than one registration index map for a specific sector, the registration rayon map shall show the existence of such maps. Registration index maps shall show boundaries, geographic locations and numbers of immovable property units.

4. Registration index maps shall be kept in accordance with the requirements of legislation on the unified state system of cadastre maps.

#### **Article 15. Registration Cards**

For each immovable property unit a registration card shall be kept, which shall consists of 3 sections:

1. Section of identification of the immovable property unit, containing a brief description of the immovable property unit, the identification number of the immovable property unit and a reference to the existence of any plan of the immovable property unit, and a note whether the boundaries are fixed or approximate.
2. Section of registration of rights, containing the name and address of the proprietor (user), lessee or any holder of a right to the immovable property unit and a reference to a right-establishing document.
3. Section of encumbrances, containing a description of all encumbrances of rights, affecting an immovable property unit with a reference to the right restricting document (pledge, mortgage, easements, etc.).

#### **Article 16. Registration Folder**

1. A registration folder shall be kept for each immovable property unit and shall consist of one or several volumes.
2. The registration folder shall contain copies of all documents containing information on the origination, modification, termination or restriction of rights to an immovable property unit, as well as a plan of the immovable property unit if one exists.

#### **Article 17. Registration Journal**

The registration journal shall contain the name and address of the applicant, description of the document submitted for registration, date and time when the document is submitted and the identification number of the immovable property unit which is the subject of the document.

#### **Chapter 4. Functioning of the Registration System**

##### **Article 18. Procedure for Assigning Identification Numbers for Immovable Property Units**

1. Registration oblasts within the boundaries of administrative oblasts (the city of Bishkek shall be considered as an oblast) shall be established on the territory of the Kyrgyz Republic. Each registration oblast shall be assigned a registration number.
2. Registration oblast shall be divided into registration rayons (districts) within the boundaries of administrative rayons, cities boundaries, which shall be assigned registration numbers.
3. Registration rayon shall be subdivided into registration sectors within the territories of village boards or large settlements - for rural areas, and for urban areas - within cities - with

one or several administrative blocks, microrayons. Each registration sector shall be assigned a registration number.

4. Registration sectors shall be divided into parcels which shall be assigned registration their identification numbers.

5. In case a building or a structure is located on a parcel the former shall be assigned an identification number within the parcel according to established procedures. If there are separate immovable property units in the building, such units shall be assigned identification numbers.

6. Coding of immovable property units according to this registration system should be consistent with the republican identification system for objects of administrative-territorial subdivision of the Kyrgyz Republic, as well as settlements (COATO).

#### **Article 19. The Procedure for Accepting Documents and the Requirements For Documents Submitted for State Registration**

1. Registration offices shall accept documents for registration on the basis of an application from the person or legal entity submitting the document.

2. A receipt verifying payment for the service provided by the registration office shall be attached to the application.

3. Documents submitted for registration should be in the proper form and contain the following:

- a) a title of the document;
- b) the identification number of the immovable property unit;
- c) the signatures of all the parties to the document; and
- d) notary certification, if required by legislation of the Kyrgyz Republic.

4. Documents must comply with applicable requirements of legislation of the Kyrgyz Republic. Additional requirements for documents may be imposed by this Law, regulations on its implementation and other legislation of the Kyrgyz Republic.

5. All documents submitted to the registration organ shall be submitted in two copies, one of which shall be the original. After registration the original shall be returned to applicant and the copy shall be filed in the registration folder.

6. No document shall be accepted for registration if it shows erasure, insertions, crossing out or other alterations not agreed upon, as well as documents executed in pencil.

7. No document which seeks to transfer, modify, terminate or place a restriction on a registered right shall be accepted without the written consent of the registered holder of the

right, except : a) transactions conducted by power of attorney meeting the requirement of legislation; b) transactions entered into by persons in a position of trust or guardianship; c) transfer, modification, restriction or termination arising by order of a court; d) transfer arising from death (legal succession).

8. Documents that meet the requirements of this Article and other requirements for specific documents established by this Law and other legislation of the Kyrgyz Republic, shall be accepted for registration.

#### **Article 20. The Exact Date and Time of Documents' Submission**

1. Upon receipt of a document from an applicant, the registration office shall make a note of the date and time of submission in the journal for incoming registration documents.

2. An applicant will be provided with a receipt containing the exact date and time of submission of the documents for registration.

#### **Article 21. Reasons For Denial of Registration**

1. An application for registration of a right to immovable property can be rejected in the following cases:

a) the submitted documents do not meet the requirements established by this Law, Regulation on its implementation and other legislation of the Kyrgyz Republic;

b) an applicant lacks legal capacity;

c) an agency or a person issuing the document submitted for registration or a person affected by the document are not authorized to use the right to the immovable property unit for which they are seeking registration.

2. In case of denial an applicant should be provided with a written note containing the reasons for the denial. A copy of the note shall be filed in the registration folder for the immovable property unit and a note should be made on the registration card.

#### **Article 22. Correction of Mistakes Omitted During Registration**

1. Mistakes occurring during registration, which would not result in transfer or alteration of the nature of a registered right, can be made by the registration office with notification to all interested parties.

2. Corrections of mistakes resulting in the transfer or alteration of the nature of the registered right, can be made only upon the agreement of all interested parties.

### **Article 23. Public Access**

The information in the registration system is open to the public. Registration organs may establish reasonable hours and other conditions on access to information in the registration system.

### **Article 24. Provision of Information Services**

Upon a request from an applicant the registration organs should provide the applicant with a certified copy of the registration card for any immovable property unit, and copies of any documents contained in the registration folder. Fees for copies shall be paid by the applicant.

### **Article 25. Granting or Restricting of Rights**

State organizations issuing a document on allocation of the right of ownership or other rights to immovable property or any restrictions shall immediately send a copy of such document to the registration organ.

## **Chapter 5. Boundaries.**

### **Article 26. Boundaries of Immovable Property Units**

1. Boundaries of immovable property units may be fixed or approximate. As a rule, a registration index map shows the approximate boundaries, area and geographical location of an immovable property unit.
2. Fixation of the boundaries may be initiated by the registration organ or the holder of the rights to the immovable property unit
3. If it is necessary to fix the boundaries, the registration organ shall notify all parties who may be affected by fixation of the boundaries of their intent to fix the boundaries.
4. After hearing all interested parties, the registration organ with the help of topographic survey fixes the boundaries of the immovable property unit, and the appropriate changes shall be introduced to the registration index map, card and a copy of the survey plan shall be filed in the registration folder.
5. If fixation of the boundaries is performed upon an application of an interested person or persons, the applicant(s) shall bear the expenses associated with fixation of boundaries.

### **Article 27. Maintenance of Boundaries**

1. Each owner (user) of an immovable property unit shall maintain in good order the features which demarcate the boundaries of the immovable property unit.

2. Any person convicted of illegally modifying or damaging any boundary whether or not any penalty is imposed upon him, shall be liable to pay the cost of restoring the boundary features.

#### **Article 28. Corrections of Registration Maps**

1. The registration organ has the right to correct text information or make a survey for correction of boundaries of an immovable property unit upon the decision of the authority in charge and consent of the persons and legal entities whose interests may be affected by the correction. Based on the results, the corresponding correction shall be introduced to the registration index map and a note shall be made on the registration card and in the registration folder.

2. In case of minor changes of boundaries of immovable property units on a registration index map, the identification numbers of the immovable property units shall remain the same.

#### **Article 29. Merging And Dividing Immovable Property Units**

1. If one person or legal entity is, or becomes the holder of the rights to adjoining immovable property units, and the rights and encumbrances on them are identical, the registration organ on the basis of an application from the mentioned holder of the rights, and a decision of the competent organ, may merge the immovable property units.

2. A holder of the rights to an immovable property unit may apply to the registration organ for division of an immovable property unit. On the basis of a decision of the competent organ and the consent of all interested parties, the registration organ divides the immovable property unit into two or more immovable property units.

3. In cases of division or merger of an immovable property unit, previously existing identification numbers shall be invalidated and the new immovable property units shall be assigned identification numbers.

### **Chapter 6. Legal Effect of Registration of Rights**

#### **Article 30. Effective Date of Registration**

The legal effect of registration arises only upon entry of the right on the registration card. The effective time and date of registration are the time and date when the document was submitted to the registration organ.

#### **Article 31. Presumptive Knowledge of Registration**

1. All persons and legal entities shall be irrefutably held to know of a registered right regardless of whether or not they have actual knowledge of the existence of such right.

2. Reference in a registered document to an unregistered document shall not constitute registration of the rights reflected in the unregistered document.

### **Article 32. Priority of Registered Rights**

Rights registered earlier in time shall have priority over rights registered later in time. Registered rights shall have legal priority over unregistered rights.

## **Chapter 7. Reimbursement of Damages**

### **Article 33. Liability for Damages**

1. The registration system shall be liable for any actual losses or damages sustained by any person or legal entity due to an omission, mistake or deliberate malfeasance in performance of the duties of officers of the registration system. Any claim against the registration system under this Article shall be brought in a court located in the jurisdiction in which the applicable registration organ is located.

2. For purposes of valuing losses, the immovable property of the claimant shall be valued as of the time the claim is made, and not as of the time of registration.

3. All claims for losses shall be based upon an independent appraisal of the loss.

4. Officers of the registration system shall not be material liable for errors or omissions occurring in good faith in the course of performance of their duties. In case of deliberate malfeasance, officers shall be responsible for material reimbursement.

### **Article 34. Period of Limitations**

Any claim against the registration system must be brought to court within three years of the date that the claim arose. (Note: Consider introduction of amendments to Civil Code, Article 221, paragraphs 4 and 5.)

### **Article 35. Exceptions to Liability of the Registration System**

The registration system shall not be liable to any claimant for losses:

- a) caused by the claimant's own negligence;
- b) caused by mistake or omission of a notary; or
- c) based upon an error in a boundary survey or description.

### **Article 36. Assurance Fund**

An assurance fund shall be established for the compensation of losses or damages according to the requirements of this Chapter. The procedure for the establishment and utilization of proceeds of the assurance fund as well as the amount of contributions to the assurance fund from proceeds collected by each registration organ shall be determined by a resolution on the

assurance fund approved by the Government of the Kyrgyz Republic. If such amounts are insufficient to pay claims, the Government of the Kyrgyz Republic shall make special allocations to the assurance fund from the republican budget.

#### **Article 37. Compensation of Damages to the Assurance Fund**

Any physical or legal person who through negligence, or fraud, or other criminal acts causes damages that are reimbursed by the assurance fund must compensate the assurance fund such amounts. The assurance fund shall have the right to bring in its own name, in order to collect compensation, a claim against the offender in the appropriate court.

#### **Chapter 8. Peculiarities of Registration of Specific Types of Rights**

##### **Article 38. Registration of Rights to Apartments And Other Premises Located in Buildings of Joint Ownership**

1. In buildings which contain apartments or other separate units of immovable property, each unit of immovable property shall be assigned its own identification number, and shall have its own registration card and registration folder.
2. Owners of apartments or other units of immovable property who form a condominium, cooperative or other legal entity recognized under the legislation of the Kyrgyz Republic must register a [foundation document] or other document describing their respective rights and responsibilities. The document must be registered on the registration card for all affected immovable property units.

##### **Article 39. Registration of Co-Proprietors of Immovable Property Units**

The registration card for any immovable property unit that is owned by two or more proprietors shall show:

- a) whether such persons are common shared owners or joint owners;
- b) if they are common shared owners, the share of ownership of each proprietor.

##### **Article 40. Registration of Leases**

1. Any lease for a immovable property unit for a period of six months or more must be registered. A lease or a sub-lease for a period less than six months may be registered at the option of the parties to the lease or sub-lease contract, but no sub-lease may be registered unless the lease pursuant to which it is granted has been registered.
2. If a portion of an immovable property unit is leased, the documentation submitted for registration must include a plan showing the leased portion of the immovable property unit.

3. Any document attempting to sublease, mortgage or otherwise dispose of all or any portion of immovable property unit subject to the lease will be refused registration without the lessor's written consent. A prohibition on sublease, mortgage or other disposition of an immovable property unit subject to the lease must be noted in the registration card.

4. A lease shall be canceled upon expiration of the term, by order of a court or arbitration court, occurrence of a condition, upon application of the lessor and lessee, or voluntary surrender of the lease by the lessee, and the cancellation shall be noted on the registration card.

5. No lease subject to a sublease or mortgage may be voluntarily surrendered by the lessee to the lessor prior to expiration of its term without the consent of the holder of the sublease or mortgage.

#### **Article 41. Registration and Satisfaction of Mortgage**

1. According to civil legislation of the Kyrgyz Republic, all mortgages of immovable property shall be registered on the registration card for the immovable property unit that is the subject of the mortgage.

2. If according to the terms of a mortgage the borrower is prohibited from disposing of the immovable property unit subject to the mortgage, or from placing another mortgage on the immovable property unit, such prohibition shall be noted on the registration card. Any document attempting to dispose of the immovable property unit subject to such restrictions will be refused registration without the consent of the holder of the mortgage.

3. The priority of a mortgage shall be determined by the date and time of its submission for registration even if a judgment enforcing the mortgage is later registered.

4. Registration organ may cancel a mortgage on the appropriate registration card upon proof to the satisfaction of the registration organ that all money due under the mortgage has been paid to the mortgagee, and that no additional money or obligations secured by the mortgage remain to be paid or fulfilled.

#### **Article 42. Registration of Use Right**

For any state-owned immovable property unit for which the state has granted a use right to any physical or legal person, the identity of the holder of the use right shall be noted in the appropriate section of the applicable registration card and the state shall be noted as the owner.

#### **Article 43. Registration of Powers of Attorney and Other Relationships of Trust**

1. Creation, transfer, modification or termination of rights to immovable property may be made pursuant to a power of attorney only to the extent permitted by legislation of the

Kyrgyz Republic. No document creating, transferring, modifying or terminating rights to immovable property by power of attorney shall be registered unless the power of attorney in legal form is presented to the registration organ and registered together with such document.

2. Any right to immovable property held in guardianship or other position of trust shall be registered only upon submission to the registration office of the documents creating and defining the relationship of trust, including contracts and orders of a court.

3. The registration card shall contain a notation that the property right is restricted by a relationship of trust.

#### **Article 44. Registration of Easements**

1. All easements shall be subject to registration under this Law.

2. The document that creates the easement shall specify conditions and the period for which it is granted, the parcels burdened by the easement, and a parcel benefited by the easement.

3. This document shall also include a plan of the parcels describing the location and extent of the easement.

4. The registration of the easement shall be completed by its notation in the restriction section of the registration card of the immovable property unit burdened by the easement and in the registration of rights section of the registration card of the immovable property unit benefited by the easement.

5. In case of absence in the document of a specified term there shall be a legal presumption that the easement is perpetual and intended to be binding upon all parties subsequently dealing with the immovable property.

#### **Article 45. Registration of Bankruptcy**

1. Entities empowered under the legislation of the Kyrgyz Republic to supervise the liquidation or reorganization of a bankrupt legal person are obliged to submit for registration a notice that the legal person is incapable of alienating of his right to immovable property.

2. Upon receipt of such notice the registration office shall enter a notation in the restriction section of the registration card, and the original shall be filed in the registration folder for the immovable property unit.

#### **Article 46. Registration of Rights Established by Judgments of Courts**

1. Rights to immovable property established by judgment of a court or an arbitration court shall be subject to registration according to the procedures for registration of other rights under this Law.

2. A judgment of a court or arbitration court affecting rights to immovable property shall be registered from the time issued regardless of whether it has become effective. Any appeal of such judgments are subject to the registration.

## **Chapter 9. Resolution of Disputes**

### **Article 47. Commissions to Resolve Disputes**

Special commissions under the local rayon, city administrations shall be formed to resolve disputes involving rights to immovable property and shall be formed and shall operate according to regulations approved by the Government of the Kyrgyz Republic.

### **Article 48. The Procedure for Resolving Disputes**

All disputes involving rights to immovable property, including disputes relating to the boundaries of an immovable property unit, shall be submitted initially to these special commissions for resolution. The special commission must notify the registration organ of the pending dispute and the registration organ must make a note of the dispute on the registration cards of the affected immovable property units. The decision of the special commission shall be recorded in a document that shall be registered on the registration card or cards of all affected immovable property units. Decisions of the special commission may be appealed in court or arbitration court. Disputes regarding rights to immovable property shall not be accepted by courts or arbitration courts until after they have been decided by a special commission.

## **Chapter 10. Registration Fees and Financing of the Registration System**

### **Article 49. Registration Fees**

Fees for registration of rights and other services provided by registration organs, and their amounts, shall be established by the Government of the Kyrgyz Republic.

### **Article 50. Allocation of Revenue**

Revenues received from activities of registration organs shall be allocated as follows:

- 1) to funding the assurance fund established according to this Law;
- 2) to pay the actual costs of operating the state registration system; and
- 3) any remainder, in the manner approved by the Government of the Kyrgyz Republic.

## **Chapter 11. Transition to the New Registration System**

### **Article 51. Opening of City, Rayon Registration Organs**

1. Following the effective date of this Law, Gosregistr shall develop and present to the Government of the Kyrgyz Republic for approval, a plan for opening city, rayon registration organs throughout the Kyrgyz Republic.
2. After the plan for opening of registration organs is approved by the Government of the Kyrgyz Republic, all state organs involved in registration and possessing documents establishing and restricting rights to immovable property must provide all available information to registration organs upon their request.
3. Local rayon/city administrations shall provide registration organs with premises for free.
4. Upon the decision of the General director of Gosregistr that a particular registration organ is ready to be opened, he shall issue a certificate on its official opening and functioning.
5. Once the registration organ is declared opened, all transactions involving immovable property in the area under the jurisdiction of the registration organ must be registered in this registration organ.

### **Article 52. Validity of Pre-Existing Rights**

Rights to immovable property that exist prior to the opening of a registration office within a geographical area, shall remain valid without the need for re-registration until they go through the preliminary registration process described in this Chapter.

### **Article 53. Implementation of Provisional Registration (Preparation of Provisional Registration Maps, Registration Cards, and Registration Folders)**

From the moment a registration organ is opened on the basis of the certificate issued by the General director of Gosregistr, it shall begin the preparation of provisional registration maps, as well as registration cards, and registration folders for each immovable property unit in the geographical zone within its jurisdiction.

### **Article 54. Public Notification of Provisional Registration**

1. Upon completion of preparation of provisional registration maps, registration cards and registration folders, a three month period shall be established for the public notification of provisional registration with display in a public place of registration index maps, and a list of owners (users) of immovable units. Registration cards for immovable property units may be available for review upon the request of interested parties.

2. During this three month period, any physical or legal entity may present a claim in written form to the registration organ with identification of the immovable property unit, and a description of any error or omission shown on the registration index map or registration card. Verbal claims or written claims submitted after expiration of the three month period shall not be accepted.

3. After expiration of the three month period for public notification, all provisional registration cards for immovable property units for which no written claims were received shall be deemed to be the official document on final registration.

#### **Article 55. Resolution of Disputes During Provisional Registration**

1. A registration organ upon receiving a written claim shall undertake actions to resolve the dispute through the mutual agreement of all interested parties. Such agreed upon corrections and resolutions shall be recorded in a notarized document which shall be recorded on the registration card, and the registration card shall be deemed to be the official document on final registration.

2. For disputes upon which all interested parties are unable to come to a mutually agreed upon solution, a note of the pending dispute shall be made on the registration card, and the dispute shall be referred to commissions on immovable property disputes formed according to the present Law.

#### **Article 56. Procedure of Effectiveness**

The present Law shall become effective from the moment of its publication.

**ATTACHMENT B: Draft Law of the Republic of Belarus on Registration of Rights to Immovable Property**

**Draft Law of the Republic of Belarus On Registration of Rights to Immovable Property\***

**Stephen B. Butler**

**Section 1. General Provisions**

**Article 1. Registration Defined**

Registration is the legal act of entering a right to immovable property into the registry of rights to immovable property in accordance with the provisions of this law. Registration in accordance with the provisions of this law is required to create, transfer, modify or terminate a right to immovable property if required under this law or another law of the Republic of Belarus.

**Article 2. Subjects of Registration**

The subjects of this law are the lawful holders of rights to immovable property, including without limitation citizens of Belarus and foreign citizens, Belarusian and foreign juridical persons, the Government of the Republic of Belarus, district and municipal governments, and their respective agencies and instrumentalities.

**Article 3. Objects of Registration**

1. The objects of registration are rights to immovable property.

2. Immovable property includes land; objects firmly attached to land which cannot be separated from the land without damage to their essential purpose, including without limitation buildings, structures, underground installations, forests and perennial plantings; and combinations of land and objects firmly attached to land. Land includes the surface and any subterranean areas or air spaces over the surface which under the laws of Belarus may be treated as a divisible portion of the land for purposes of registration.

If another definition of immovable property is established by the civil legislation of the Republic of Belarus after the enactment of this law the definition of immovable property established in this Article shall be deemed amended to the extent necessary to conform to the definition provided in the civil legislation.

**Article 4. Rights Which Must Be Registered**

1. Rights to immovable property presently or hereafter recognized under the laws of Belarus which must be registered under this law include:

(a) ownership;

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\* Submitted to the Ministry of Housing and Communal Services of the Republic of Belarus in connection with World Bank/International Development Fund Contract No. 28802-BY.

- (b) inheritable possession for life;
- (c) permanent use;
- (d) rights of economic and operational management and rights of construction;
- (e) temporary use, lease or sublease for a term exceeding 3 years;
- (f) servitudes, as defined in this law;
- (g) rights created by mortgage or pledge;
- (h) judgments of courts or arbitration courts affecting registered rights to immovable property;
- (i) design, construction and use restrictions applicable to immovable property, other than such restrictions which are applicable to immovable property generally and contained in a law or regulation.

2. Registration of a transfer, modification or termination of a right to immovable property is required if registration of the right which is transferred, modified or terminated is required.

3. The consequences specified in this law for failing to register rights to immovable property are in addition to the consequences specified in any other law of the Republic of Belarus.

4. Immovable property owned by the Republic of Belarus or any district or municipal government of the Republic of Belarus must be registered under this law only if a right to such immovable property, other than a right granted to the public generally, is granted by the owner to a physical person or a juridical person that is not owned in its entirety by the state, district or municipal government. For purposes of this paragraph, a state or municipal enterprise or collective farm is considered to be a juridical person which is not owned by a state, district or municipal government.

#### **Article 5. Other Rights Which May Be Registered**

A preliminary contract to purchase a right to immovable property, an option to purchase a right to immovable property, or a preferential right to purchase a right to immovable property may be registered under this law at the option of the parties to the contract, option or preferential right.

#### **Article 6. Rights Arising From Unregistered Rights**

Only rights which arise from a registered right may be registered except:

- a) rights arising from unregistered rights of ownership held by state, district or municipal governments;

- b) rights arising from a judgment of court or arbitration court; or
- c) rights arising from rights which are legally effective without registration under this law or another law of the Republic of Belarus.

#### **Article 7. Servitudes Defined**

1. In this law the term "servitude" is defined to include:
  - a) any right to make limited use of the immovable property of another without actual possession of the immovable property, including rights to enter upon land for the purpose of extracting or removing minerals, timber or other natural objects.
  - b) any agreement made by the owner of immovable property to do or to refrain from doing anything on his land for the benefit of others; and
  - c) any agreement among owners or users of immovable property intended to bind them and all future owners of such immovable property to contribute financially to common maintenance.

2. If another definition of servitude is established by the civil legislation of the Republic of Belarus after enactment of this law the definition established in this Article shall be deemed amended to the extent necessary to conform to the definition provided in the civil legislation.

#### **Article 8. Burden Defined**

In this law the rights identified in items (c) through (i) of Article 4 are defined as burdens on immovable property. For purposes of registration under this law, inheritable possession for life is deemed to be equivalent to ownership.

#### **Article 9. Effect of Unregistered Transactions**

1. To the extent permitted under the civil legislation of the Republic of Belarus, prior to registration a right to immovable property may nevertheless be enforceable against the grantor of the right as a contract for creation or transfer of a right to immovable property.

2. If a party to a transaction to create or transfer a right to immovable property delays or hinders registration of the transaction a court may grant to the party who has performed his obligations in the transaction an order compelling registration, provided that do so would not adversely affect the rights of an intervening purchaser of a right to immovable property for value and in good faith, as defined in this law.

#### **Article 10. Changes to Laws**

Future civil legislation of the Republic of Belarus may require registration of additional types of rights to immovable property, but the validity of unregistered rights to immovable

property legally in existence prior to the enactment of such legislation shall not be adversely affected by such legislation.

## **Section 2. Administrative Structure of the Registration System**

### **Article 11. National Commission on Registration of Rights to Immovable Property**

1. There is hereby created a National Commission on the Registration of Rights to Immovable Property (the "Commission").

2. The Commission shall consist of five members. Four members of the Commission shall be the Ministers of Housing and Communal Services, Natural Resources, Architecture and Construction, and Justice serving in their official capacities. A fifth member of the Commission shall be a representative of a district or local government appointed by the President of the Republic.

3. The Commission shall operate for a period of three years following the effective date of this law. During its period of operation the Commission shall guide the implementation of the system of registration of rights to immovable property described in this law and shall have the authority to enact regulations governing creation of such system. Such regulations shall be obligatory for all district and municipal Immovable Property Registries created under this law.

4. At least one year prior to expiration of the period of operations of the Commission the Commission shall make recommendations to the Government of Belarus for creation or designation of a permanent body to supervise the system of registration of rights to immovable property and the operations of the Commission shall continue until such a permanent body has been created regardless of whether the three year period of operations has expired. The authority of the Commission shall expire upon legal creation or designation of the permanent supervisory body.

5. The Commission shall be funded from the budgets of the Ministries of Housing and Communal Services, Natural Resources, Architecture and Construction and Justice in such proportions as shall be determined in the budget process.

6. The Commission shall appoint an Executive Director who shall be charged with supervising the day to day operations of the Commission under the direction of the Commission. The Executive Director shall have the authority to supervise the staff of the Commission, prepare proposed regulations for consideration by the Commission, make other recommendations for action by the Commission, and resolve methodological issues that may arise in implementation of the system of registration by issuing instructions that do not conflict with this law or the regulations of the Commission. Any decisions or actions of the Executive Director shall be subject to review and nullification by the Commission upon application of any interested party.

### **Article 12. Immovable Property Registry**

1. An Immovable Property Registry shall be established by the local council of every city and district of the Republic of Belarus. Upon decision of the National Commission, a consolidated Immovable Property Registry may be created to serve more than one municipality or more than one district. Separate Immovable Property Registries may be created for districts within cities at the option of the city council.

2. Rights to immovable property must be registered with the Immovable Property Registry for the city or district in which the immovable property is located, and any attempt to register the rights elsewhere shall be legally ineffective.

### **Article 13. Registrar**

1. The Immovable Property Registry shall be under the supervision of a Registrar, who shall be appointed by the local head of administration. The Registrar may appoint such subordinates as may be necessary to carry out the work of the Immovable Property Registry, and delegate to such subordinates all or any portion of the responsibilities of the Registrar under this law. Acts of duly appointed subordinates of the Registrar on behalf of the Registrar in any matter shall have the same force and effect as if performed by the Registrar and shall be deemed the acts of the Registrar for all purposes.

2. The Registrar shall be a person certified in legal science, geodesic science, land surveying, records management or computer science and have at least five years experience in the practice of his profession.

### **Article 14. Registrar's Powers**

The Registrar may exercise the following powers in addition to the powers conferred elsewhere in this law:

- a) require any person to produce documents relating to a right to be registered;
- b) summon any person to appear and give information or explanation regarding rights to immovable property, or any instrument, certificate or document relating to rights to immovable property;
- c) administer oaths or require that any proceeding, information or explanation be verified by oath or affidavit;
- d) order that the reasonable costs, charges and expenses incurred by him or any person in connection with any investigation or hearing conducted under this law may be borne by such person in such manner or such proportions as he shall decide, and such costs shall be deemed to be a fee of registration in accordance with the provisions of this law.

### **Article 15. Local Registration Commissions**

1. A Local Registration Commission shall be created by the local council of each district and city which shall consist of the Registrar and the chairman of the district or municipal Committee on Land Resources and Development and the head of the local Bureau of Technical Inventory. Upon decision of the National Commission, a consolidated Local Registration

Commission may be created to serve more than one municipality or more than one district. The Local Registration Commission is empowered to hear and decide:

- a) disputes arising under this law relating to registration or refusal to register rights;
- b) disputes relating to land boundaries registered under this law;
- c) such other matters as are referred to it by the Registrar under this law.

2. The Local Registration Commission may hear and decide only those issues which are referred to it by the Registrar or by application of any person appealing a decision or action of the Registrar.

3. Hearings of the Local Registration Commission may proceed upon not less than ten days written notice to all registered holders of rights to the immovable property which is the subject of the hearing.

4. Hearings of the Local Registration Commission shall be open to all affected parties and such parties shall have the right to appear and present evidence in their cause, either personally or through legal representatives. Minutes shall be kept of the proceedings and provided to participants on their request. All decisions of Local Registration Commissions shall be made by majority vote.

5. No dispute subject to a hearing by the Local Registration Commission shall be entertained by a court or arbitration court until such time as the Local Registration Commission has rendered its decision in the dispute. All final decisions of the registration commission may be appealed by a party to the dispute to any court or arbitration court.

6. When deciding issues brought before it the Local Registration Commission shall have the same powers as the Registrar under Article 14 of this law.

7. Decisions of the Local Registration Commission shall be binding on the Registrar.

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### **Section 3. The Registration Book**

#### **Article 16. Applications for Registration**

A right to immovable property is registered by submission to the Registrar of an application for registration accompanied by legal documents which meet the requirements of the civil legislation of the Republic of Belarus and this law as to form and which create, transfer, modify, terminate or create a contractual obligation affecting rights to immovable property.

## **Article 17. Forms of Legal Documents**

1. A document submitted to the Registrar by subjects of this law as the basis for registration of a right to immovable property must include:

(1) the signatures of the parties to the document; (2) a description of the immovable property in words or by reference to a boundary survey meeting the requirements of this law; (3) the cadaster number and/or building inventory number of the immovable property, (4) a description of the right to immovable property which is the subject of the document, and (5) notarial certification if required by law. Additional requirements for documents may be imposed with respect to specific types of rights to immovable property by this law, other legislation of the Republic of Belarus or regulations of the National Commission or its legal successors. Any document meeting the requirements of this paragraph and any other mandatory requirements established by this law and the civil laws of the Republic of Belarus as to the form of the specific document shall be accepted by the Registrar.

2. The National Commission and its legal successors may establish by regulation specific forms for applications, abstracts or other documents that must accompany legal documents submitted to the Registrar, and such forms shall be used uniformly throughout the Republic of Belarus. Applicants may submit to the Registrar whatever document they have executed to reflect their agreement, provided that the documents required by regulation are also submitted. In the event of a conflict in the information contained in a document required to be filed by regulation and any other documents filed by the applicant, the information contained in the document required by regulation governs.

## **Article 18. Systematic Registration of Rights**

Rights to immovable property may be registered without application of the holders of those rights if such registration is pursuant to a systematic procedure of identification and clarification of rights ("adjudication of rights") authorized by law and supervised by the Government or its designated agency. Registration of rights on the basis of applications from the subjects of this law shall continue despite commencement of adjudication of rights unless such registration is suspended by the law which authorizes the adjudication process, and the adjudication process shall not adversely affect any rights previously registered under this law by application.

## **Article 19. Number of Documents**

At least three copies of each legal document shall be submitted to the Registrar. Two copies of each document shall be returned to the applicant and one copy shall be retained by the Registrar for the Registration Book. Any original documents, or copies or duplicates of documents, accepted by the Registrar and returned to applicants must bear the seal or stamp of the Registrar.

## **Article 20. Documents Transferring, Terminating or Modifying Registered Rights; the Principle of Consent**

No document which seeks to transfer, terminate, modify or place a burden on a registered right to immovable property shall be accepted by the Registrar without the written consent of the registered holder of the right to be transferred, terminated, modified or burdened, except (1) transactions conducted by power of attorney meeting the requirements of law; (2) transactions

entered into by persons in a position of trust or guardianship; (3) transfers, modifications, terminations or burdens arising by order of a court or arbitration court; and (4) transfers arising from death or legal succession. A document purporting to transfer, terminate, modify or burden a registered right but which lacks the written consent of the registered holder of the right may be accepted by the Registrar as the basis of an adverse claim under the provisions of Article 66 of this law.

#### **Article 21. Pending Applications**

1. The Registrar shall keep a log of applications for registration known as the application book.

2. The Registrar shall issue an application registration number for each application for registration. Application registration numbers shall be issued sequentially in the order applications are received and entered into the application book together with (1) the cadastre and/or building number of the immovable property; (2) the names and addresses of the applicants; (3) a brief description of the nature of the application; and (4) the time and date the application was submitted. Each entry in the application book shall be canceled by the Registrar upon final registration.

3. Registration of rights affecting the same immovable property shall occur in the order in which applications are entered into the application book.

4. The Registrar shall provide to the applicant a written receipt showing the registration number of the application and the date and time the application for registration is accepted by the Registrar.

5. Upon receipt of an application for registration, the Registrar shall immediately enter in File A of the registration case for the immovable property a memorandum noting the existence of a pending application.

6. An uncanceled application shown in the application book or a memorandum of application in File A constitute notice of the pending application to all interested parties, and all pending applications will be made available for inspection by interested parties in the same manner as information contained in the Registration Book generally.

#### **Article 22. The Registration Book**

1. The Registrar shall maintain the Immovable Property Registration Book (the "Registration Book"), which shall be the official record of rights to immovable property in the locality for which it is created.

2. The Registration Book shall be comprised of a separate registration case for each unit of immovable property described in paragraph 3 of this article. A registration case shall be opened only upon initial registration of a unit of immovable property, subdivision of a unit of immovable property into two or more units, or merger of two or more units of immovable property into a single unit. All rights to immovable property other than ownership and right of inheritable possession are deemed to be derivative of ownership or inheritable lifetime possession and are registered as burdens on the rights of ownership or inheritable possession for life.

3. Units of immovable property for which a separate registration case may be opened include the following:

- a) a land parcel;
- b) a land parcel and the objects attached to it which together are held in unified ownership;
- c) an object attached to a land parcel which is in the ownership of someone other than the owner of the land;
- d) portions of buildings or structures which under law may be separately owned; and
- e) two or more land parcels, with or without the objects attached to them, which form a functional unit and which the owner chooses to register as a single unit of immovable property.

Subsequent to creation of a registration case no portion of a unit of immovable property may be sold or mortgaged without first creating new registration cases for the resulting units of immovable property. Subdivision of a unit of immovable property for purposes of registration may be subject to the rules of subdivision of immovable property set out in this law or other laws of the Republic of Belarus.

4. Each registration case shall consist of three files. Each of the files shall contain the cadaster number of the land and/or the building numbers of any structures or buildings located on the land. In addition, the files shall contain the following information:

(a) File A shall contain:

- (1) the names and addresses of the current owners of the land or holders of rights of inheritable lifetime possession;
- (2) the title, date and registration date of documents establishing the legal basis of ownership of the land or right of inheritable lifetime possession;
- (3) the reference number and date of the current boundary survey of the land;
- (4) the size of the land parcel or general description of the unit of immovable property; and
- (5) Registrar's notations required under this law.

(b) File B shall contain:

- (1) the title, date and date of registration of any document creating a burden on the unit of immovable property or on any other right or burden identified in File B;

- (2) the name and address of the holder of the burden;
- (3) a description of the nature of the burden; and
- (4) Registrar's notations required under this law.

(c) File C shall contain the documents which provide the information base for Files A and B. File C shall include an index of documents kept in the sequential order in which they were entered into the Registration Book.

### **Article 23. Registration Numbers**

1. Each registration case shall be assigned a unique case number which shall be assigned by the registrar sequentially as registration cases are created. All matters submitted for registration related to a registered unit of immovable property shall be filed under the same case number.

2. Prior to creating a registration case each unit of immovable property must have assigned to it a unique registration number, which shall be assigned as follows:

- a) in the case of registration of land parcels, or land and objects held in unified ownership and registered as a single unit of immovable property, the registration number shall be the land cadastre number of the land assigned by the State Land Committee;
- b) in the case of registration of separately owned structures and buildings the registration number shall be the building number of the structure or building assigned by the Bureau of Technical Inventory;
- c) in the case of registration of separately owned portions of buildings, the registration number shall be the building number of the building and a suffix consisting of the apartment or space number assigned by the Bureau of Technical Inventory.

3. In case a parcel of land has not yet been entered into the land cadastre, the Land Committee shall issue a provisional registration number. Provisional registration numbers shall be clearly identified as such in the Registration Book. The Land Committee shall notify the Registrar in writing upon assignment of a cadastre number to any land which was registered under a provisional registration number, and the Registrar shall make any necessary changes in the registration case.

4. In case a building or structure has not yet been assigned a building number by the Bureau of Technical Inventory, a building or separately owned portion of a building may be registered on the basis of the street address of the building. The Bureau of Technical Inventory shall notify the Registrar in writing upon assignment of a building number to any building which was registered under a street address, and the Registrar shall make any necessary changes in the registration case.

### **Article 24. Indexes**

To facilitate access to the information in the Registration Book the Registrar shall create indexes which correlate street addresses, registration numbers, names of the current owners cadastre and building numbers of the registered immovable property in such a manner that having any of the foregoing parameters relating to a unit of immovable property a user of the Registration Book is able to gain access to the registration file for the unit of immovable property.

#### **Article 25. State Akts**

A duplicate copy of the certificate of ownership (State Akt) issued by the State Land Committee shall be entered in File C. Neither the Registrar nor the registered owner shall have the obligation to maintain their respective copies of the State Akt as an exact duplicate of the information contained in the Registration Book. Upon presentation of a State Akt by the owner, the Registrar shall note on the owner's copy registered interests arising after issuance of the State Akt. If there is a conflict between the information contained in any copy of a State Akt and the information contained in the Registration Book, the information contained in the Registration Book governs.

#### **Article 26. Maintenance of Records by Registrar**

The Registrar may from time to time remove from the Registration Book such entries or documents as the Registrar determines to have ceased to have any legal effect or may prepare new pages of entries into the Registration Book omitting from such pages any entries or documents which have ceased to have effect. Prior to removing entries or documents from the Registration Book the Registrar shall provide written notice of the proposed action to all persons holding a registered right in the immovable property affected, and such persons shall have a period of thirty days from the date of such notice in which to present objections to the Registrar, and if no objections are made upon expiration of the thirty day period the Registrar may make the proposed change to the Registration Book. The actions of the Registrar may be appealed to the Local Registration Commission. Pages or documents removed from the Registration Book by the Registrar shall be retained permanently in the Registrar's archive.

#### **Article 27. Lost or Destroyed Documents**

If information or documents contained in the Registration Book are lost or destroyed the Registrar may reconstruct the information and documents of the Registration Book on the basis of all available information, including duplicate files maintained electronically, by microfiche or in paper form. Prior to entering reconstructed information into the Registration Book copies of reconstructed records prepared by the Registrar shall be sent to all parties holding a registered right affecting the immovable property and such parties shall have a period of thirty days from the date of such notice in which to present objections to the Registrar, and if no objections are made upon expiration of the thirty day period the reconstructed records shall be entered into the Registration Book. The actions of the Registrar may be appealed to the Local Registration Commission.

#### **Article 28. Correction of Defects**

1. Technical errors (slips of the pen) in the Registration Book may be corrected by the Registrar on his own initiative or upon the application of a person holding a registered right to the immovable property. Prior to making any such change in the Registration Book the Registrar shall provide written notice of the proposed change to all persons holding a registered

right in the immovable property affected, and such persons shall have a period of thirty days from the date of such notice in which to present objections to the Registrar, and if no objections are made upon expiration of the thirty day period the correction shall be entered into the Registration Book. The actions of the Registrar may be appealed to the Local Registration Commission. Material errors in the information contained in the Registration Book, correction of which would result in transfer, modification, or termination of a right, or material detriment to another registered right, may be corrected by the Registrar only upon order of a court.

2. Any holder of a registered right affecting immovable property may apply to the Local Registration Commission to compel the Registrar to correct a defect in the Registration Book.

3. Technical defects in registered documents, entries in the Registration Book or the process of registration that do not defeat the essential purpose of notice to other parties are not grounds for nullifying the legal effect of registration in the absence of demonstrated harm to a third party who reasonably relied on the registered information.

#### **Article 29. Notarized Documents**

The Registrar is under no obligation to inquire into the accuracy or validity of the following matters to which a notary's certification attests as to the truth and accuracy: the identity of the parties to a transaction; compliance of documentation with legal requirements; the accuracy of any information contained in documents submitted for registration, other than matters which rely on the information found in the Registration Book; the authority of any person holding property in trust for the benefit of another party; or the proper execution of any document.

#### **Article 30. Electronic Data**

1. All or any portion of the Registration Book may be kept by the Registrar in any form, including electronic or photographic data, and such data shall be legally valid registration data having the same legal force and effect as paper documents.

2. Regardless of the form in which the Registration Book is kept, the Registrar is obligated to maintain a repository of the original documentation, or copies of such documentation in paper or microfiche form, on which basis entries into the Registration Book are made. In the case of conflicts between such paper documentation and information kept in any other form the information contained in the paper documentation shall govern, provided that to do so may not adversely affect rights to immovable property acquired for value and in good faith as defined in this law.

3. Additional regulations governing the form of the Registration Book and procedures for its maintenance which do not conflict with this law may be issued by the National Commission or its legal successors from time to time.

#### **Article 31. Integrity of System**

Entries and changes to the Registration Book shall be made only by authorized persons. The integrity of the Registration Book, regardless of the form in which it is kept, shall be assured by appropriate protections against entry or change of data in the Registration Book by unauthorized persons. The National Commission shall issue regulations governing procedures to

be implemented to assure the integrity of the Registration Book. It shall be a criminal offense under the laws of Belarus for any unauthorized person to deface or destroy any part of a Registration Book or to enter or change data in the Registration Book.

### **Article 32. Rejection of Applications by Registrar**

1. The Registrar shall reject an application for registration in the following cases:
  - a) failure to submit with the application the documentation required by this law or regulations promulgated pursuant to this law;
  - b) failure to submit documentation in the form required by law or regulation;
  - c) conflicts between the information contained in the application and the information contained in the Registration Book;
  - d) discrepancies in documents, records or pending applications for registration on the basis of which the Registrar is justified in mounting an inquiry into the facts and circumstances of the registration; or
  - e) if at the moment the application is received there is a pending dispute regarding ownership of the immovable property;

2. Rejection must be made within seven days of receipt of the application. In each case the Registrar must provide to the applicant a written notice setting out the reasons for rejection. If rejection is made in connection with a Registrar's inquiry, the notice of rejection shall also identify any additional documents or information which the Registrar requires to be submitted and a date, time and place at which the applicant is to appear and present such additional information to the Registrar. If rejection is made in connection with referral to the Local Registration Commission, that referral shall be noted in the notice of rejection.

3. If the application for registration is rejected, the entry of the application in the application book shall be marked canceled and initialed by the Registrar and the memorandum of pending application removed from File A of the registration case, and any subsequent application relating to the same immovable property shall be treated as a new application.

### **Article 33. Public Access**

The Registration Book is a public record and the information contained in the Registration Book shall be available to all subjects of this law. The form in which such information is to be made available is determined under this law and the regulations of the National Commission and its legal successors. The Registrar may set reasonable hours and other conditions on access to the information in the Registration Book.

### **Article 34. Documents Issued By the Registrar**

1. Upon application of any subject of this law the Registrar shall issue (1) summaries or abstracts of the current rights contained in the Registration Book, and (2) copies of

documents contained in File C of the Registration Book. Such summaries or abstracts shall be in the form provided by regulation of the National Commission and its legal successors.

2. Official summaries and abstracts shall be identified as such on the issued document and shall bear the seal of the Registrar. Subject to the further provisions of this law, an official summary or abstract of the information contained in the Registration Book carries with it the representation of the Registrar that the information provided is true and correct and may be relied upon by the its recipient.

#### **Article 35. Additional Requirements**

The National Commission and its legal successors may provide by regulation for reasonable additional requirements for registration that are related to the integrity and administrative efficiency of the system of registration and which do not contradict this law or any other law of the Republic of Belarus.

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### **Section 4. Land Boundaries**

#### **Article 36. Boundary Surveys**

1. Opening of a registration case pertaining to a land parcel shall require a boundary survey of the land which meets the standards for boundary surveys established by this law and the State Land Committee. The boundary survey shall be referenced in File A and filed in File C of the registration case. The requirement of a boundary survey may be met by reference to a cadastre number and cadastre map included in a national land cadastre as defined in this law, and in such case it shall not be required to enter a copy of the boundary survey in File C of the registration case.

2. A registration case may be opened with surveys showing fixed or approximate boundaries, having respectively the legal implications provided in Article 53 of this law. Technical standards for boundary surveys submitted for registration may be established by regulation of the State Land Committee from time to time. Standards established by the State Land Committee shall include the distinctions between fixed and approximate boundary surveys.

3. Subsequent to opening a registration case, registration of a right to immovable property shall require submission of a new survey if the boundaries of the land are altered or modified in any way or if the right to be registered can only be adequately defined by reference to a specific portion of the land. For all other matters the requirement of a boundary survey may be met by reference to the existing boundary survey entered in the Registration Book.

#### **Article 37. Fixed and Approximate Boundaries**

1. Land boundaries may be fixed or approximate.

2. Boundaries may be fixed only by application to the Registrar and submission to the Registrar of a boundary survey certified by the State Land Committee as meeting the requirements for a fixed boundary survey. Boundaries may not be fixed in the Registration Book without (1) a written agreement in notarized form of all registered owners of adjoining land, or

(2) notice from the Registrar to all owners of adjoining land and a period of sixty days from the date of such notice for such owners to appear before the Registrar to state objections to the proposed boundaries. Decisions of the Registrar on fixed boundaries may be appealed to the Local Registration Commission. An applicant shall bear all costs incurred by the Registrar in establishing fixed boundaries to land.

3. Fixed boundaries shall be marked on the ground by permanent boundary markers. It shall be a criminal offense under the laws of Belarus to move or tamper with boundary markers.

4. An approximate boundary is any boundary that is not fixed. Approximate boundaries may be established by methods or techniques established by the State Land Committee.

5. The Registration Book shall contain an annotation of the Registrar in File A whether boundaries are fixed or approximate.

### **Article 38. National Land Cadastre**

1. A national land cadastre is an undertaking of the national government of Belarus or one of its agencies authorized by legislation and consisting of data, systems and procedures for systematically defining land parcels in Belarus as unique spatial units of land tenure. If authorized by law, land boundaries may be fixed for purposes of registration through the process of creating a national land cadastre.

2. A parcel of land defined in a national land cadastre may be registered in the Immovable Property Registry only as so defined. No subdivision, sale, or mortgage of a portion of a parcel of land entered into the national land cadastre shall be registered until a subdivision of the parcel of land has been approved and reflected in the national land cadastre and cadastre numbers issued for the land parcels resulting from the subdivision.

3. The authorities responsible for creating and maintaining a national land cadastre are obliged to notify the Registrar upon entry of a parcel of land into national land cadastre, and upon any subsequent modification, subdivision or merger of that parcel of land.

### **Article 39. Adjustment of Boundaries**

Boundaries between two adjoining land plots may be adjusted by the Registrar upon application of the owners provided that the amount of land involved in the adjustment is insignificant absolutely and relative to the land parcels to which the adjustment applies; the written consent of persons holding encumbrances on the parcels is obtained; and the land parcels are not entered into the national land cadastre. Any adjustments made by the Registrar shall be made on the basis of a survey provided by the parties requesting the adjustment and meeting the standards of the State Land Committee. Adjustments to boundaries of parcels of land entered into the national land cadastre may be made only following modifications to the national land cadastre in the usual process.

### **Article 40. Registry Map**

1. As an aide to users of the Immovable Property Registry the Registrar shall keep a map to be known as the registry map. The registry map may be divided into separate sections or blocks which are portions of the land under the jurisdiction of an Immovable Property Registry and shall depict at a minimum all land parcels under the jurisdiction of the Immovable Property Registry; the approximate locations of any objects located on the land parcel; the approximate locations of servitudes affecting the land parcel which are specifically defined by map or survey found in the Registration Book; and the cadastre, building and registration file numbers of the immovable property depicted on the map.

2. Where parcels of land have been entered into the national land cadastre the registry map shall duplicate the national cadastre map with respect to the boundaries, location and cadastre numbers of the land parcels depicted.

3. The registry map shall be updated by the Registrar by making changes or notations by hand. The Registry map is an aide, and the boundaries or locations of immovable property indicated thereon are approximate only, and in the case of a conflict between the information depicted on the registry map and the information contained in the Registration Book the information contained in the Registration Book shall govern.

4. The Registrar may at any time prepare a new registry map or portion thereof, omitting from the map any matters that have become obsolete.

#### **Article 41. Boundaries and Adverse Possession**

Nothing in this Section is meant to prohibit claims of acquisition of rights to immovable property through the acts of use and occupancy to the extent permitted under the civil legislation of Belarus.

#### **Article 42. Boundary Disputes**

All disputes concerning boundaries of land shall be referred to the Local Registration Commission.

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### **Section 5. Legal Effects of Registration**

#### **Article 43. Definition of Value**

1. To acquire a right to immovable property for value means to acquire the right:
  - a) for cash or other thing, right or obligation having value; or
  - b) by execution of an enforceable and irrevocable contract of purchase; or
  - c) by enforcement of a mortgage or other judicial act.

2. A person shall be considered to have acquired a right for value even though the entire payment required by agreement of the parties for purchase of the right has not been made, provided that such person is under a binding contractual obligation to make the payments.

3. In the absence of a finding of dishonesty on the part of the person acquiring the right, no right shall be subject to challenge on the basis of any discrepancy in the value of the right and the amount of the value paid for the right.

4. Persons acquiring a right to immovable property through gift, inheritance or other legal succession do not acquire the right for value.

5. Each document submitted to the Registrar as the basis of registration of a right shall contain a true statement of the value paid for the right or the amount of loan secured by a mortgage, as the case may be.

#### **Article 44. Definition of Good Faith**

Subject to Article 46 of this law, good faith exists if a person acquiring a right to immovable property has no actual knowledge of any fact that would render the transaction dishonest or an unfair advantage over another, or would be a violation of the laws of the Republic of Belarus.

#### **Article 45. Effective Date of Registration**

The legal effect of registration arises only upon entry of the right in the Registration Book. Upon entry of the right into the Registration Book, the effective date of registration is the date on which the application for registration is accepted by the Registrar and entered into the application book created under Article 21 of this law. The date the application for registration is accepted by the Registrar and entered into the application book is determinative regardless of the date or dates on any document submitted for registration or any delay in entering a right into the Registration Book.

#### **Article 46. Notice**

1. From the effective date of registration, registration of a right to immovable property constitutes notice in law of the existence of such right to all persons thereafter dealing with the immovable property. In any dispute relating to registered rights to immovable property persons having notice in law shall be irrefutably held to know of a registered right to immovable property regardless of whether or not they have actual, personal knowledge of the existence of such right.

2. Neither the reference in a registered document to an unregistered document or to a person having no registered right to the immovable property shall constitute registration or notice of a right to immovable property.

#### **Article 47. Priority**

In a dispute in which the priority of conflicting rights to immovable property is at issue, the property right registered earlier in time will have legal priority over rights registered later in time.

**Article 48. Legal Effect of Unconditional Registration of Ownership or Lifetime Inheritable Possession**

1. The holder of a registered right of ownership or lifetime inheritable possession holds that right free from the claims and effects of all other hostile or conflicting rights and interests except the following:

- a) any rights registered prior to or simultaneously with the registration of such right and remaining in force and uncanceled;
- b) the effects of laws and regulations of general applicability to immovable property, including town planning, health, safety, building and environmental laws;
- c) a claim for taxes or other public assessments which by law need not be registered and are deemed to be superior to any other property right affecting the immovable property;
- d) rights arising through the act of unregistered possession or use of immovable property to the extent permitted in this law and the civil legislation of the Republic of Belarus;
- e) leases or rights of temporary use for terms of less than two years, unless inquiry is made of persons in occupancy of the immovable property and the existence of such a lease or right of temporary use is not disclosed;
- f) a claim arising from allegations of fraud or misrepresentation in which the holder of the right participated or of which the holder of the right had knowledge; and
- g) a claim that the transaction by which the right was created, transferred, modified or terminated is ineffective or void under the laws of the Republic of Belarus .

**Article 49. Legal Effect of Registration of Rights Other Than Ownership and Lifetime Inheritable Possession**

The holder of a registered burden on a right of ownership or inheritable lifetime possession, or on another registered burden, holds that right subject to those claims set out in Article 49 and to the terms and provisions of any agreement which created the burden.

**Article 50. Acquisition For Value and in Good Faith**

A holder of a registered right to immovable property acquired for value and in good faith shall not be subject to claims based on paragraph (g) of Article 49 made with respect to any right

or transaction arising or occurring prior to registration of his own right, and under no circumstances may a decision of a court or arbitration court based on such grounds impair the rights and interests of any person who acquires a right to immovable property for value and in good faith.

#### **Article 51. Acquisition Without Value or Good Faith**

A person who acquires a right to immovable property without paying value or without good faith shall be subject to all claims to which such right was subject in the hands of the party from which the right was acquired.

#### **Article 52. Legal Implications of Boundaries**

1. Fixed boundaries are accurate as a matter of law to the tolerances established by the standards of the State Land Committee. Challenges to boundaries among adjoining landowners are not permitted after sixty days from registration of fixed boundaries in the Registration Book, and no such challenge shall be entertained by a Local Registration Commission, court or arbitration court after expiration of such period. Challenges to boundaries designated in the Registration Book as fixed shall not be permitted as against the interests of one who acquires rights for value and in good faith.

2. Boundaries which are approximate shall be subject to challenge at any time by any adjoining landowner.

3. A dispute regarding boundaries may be registered in the Registration Book as a hostile claim under Article 66 of this law and until the boundary dispute is resolved the initial registration shall continue in force and effect for all purposes other than determination of the precise boundaries of the land.

4. Boundary surveys contained in the Registration Book imply no representation as to the ownership of natural or man made boundary markers shown on the survey, including without limitation walls, fences and streams.

#### **Article 53. No Duty to Inquire**

A person who acquires a registered right to immovable property is not obliged to inquire into the validity of the registration or the circumstances surrounding the transferor's acquisition of the right to be transferred.

#### **Article 54. Legal Effect of Registration of Burdens on Burdens**

Registration of a burden on a burden on immovable property does not affect the rights of the owner of the immovable property unless otherwise provided by law or by a contract signed by the owner.

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## **Section 6. Rules Affecting Specific Types of Rights to Immovable Property**

### **Article 55. Secondary Transactions**

1. Secondary transactions in rights to immovable property are any transactions subsequent to creation of the registration case for the unit of immovable property and which involve a transfer, modification or burden of the right to the immovable property, including without limitation: sale, exchange, testamentary devise, lease, sublease, pledge and mortgage, termination or creation of rights through judgment of court or arbitration court, creation of servitudes, changes of use, construction or demolition, subdivision or merger.

2. Secondary transactions relating to immovable property are registered directly with the Immovable Property Registry of the district or municipality in which the property is located. No certificate or approval from a state agency shall be required to be issued or reissued for any secondary transaction, and all secondary transactions will be completed and registered solely on the basis of legal documents prepared by the parties to the transaction or their agents and notarized if required by law.

3. Nothing in this Article is intended to prevent the usual and ordinary review and approval by agencies of government of transactions in immovable property relating to subdivision and merger of land plots, town planning requirements and construction permits

### **Article 56. Ownership Rights to Objects**

If ownership rights to objects firmly attached to land are held by persons other than the registered owner of the land, such rights shall be registered in the registration case opened for the object as a separate unit of immovable property as well as in the registration case of the land as a burden on ownership of the land.

### **Article 57. State, District and Municipal Land**

If registration is required under this law, land ownership by state, district or municipal governments shall be reflected with the words "State Land," "District Land" or "Municipal Land," as the case may be.

### **Article 58. Rights to Objects Located on Unregistered Land**

Rights to an object attached to land may be made prior to registration of the land on which such object is located. Objects located on unregistered land shall be registered by building number and address. Upon registration of the land on which the registered object is located the Registrar will update the registration file of the object with the registration data for the land.

### **Article 59. Common Ownership, Generally**

1. The rules of this Article apply to the extent not modified by the more specific rules on registration of common ownership rights found in the succeeding Articles.

2. Only one registration case is created for a unit of immovable property held in common ownership.

3. Common ownership of a unit of immovable property shall be reflected in the registration case in File A.

4. The Registration Book shall distinguish between common ownership without designated shares and common ownership with designated shares and provide in File A, as the case may be, a statement of the respective shares of the common owners. In the absence of identification of the form of common ownership there is a legal presumption, which may be relied on by users of the Registration Book, that the common ownership is without shares. In the absence of specified shares of ownership in the Registration Book, there is a legal presumption, which may be relied on by users of the Registration Book, that the identified common owners share equally in the property.

5. Any right of preferential purchase held by common owners or other restriction on the right to dispose of common ownership shares must be noted by the Registrar in File A.

6. Common owners may enter into File A of a registration case notation of an agreement or declaration of common ownership in a form prescribed by law, a copy of which shall be filed in File C of the registration case.

7. Immovable property held by a partnership, cooperative or other juridical entity which issues shares is owned by the juridical entity and not the shareholders. The holders of partnership or cooperative interests or owners of shares in the juridical entity are not registered in the Registration Book.

### **Article 60. Registration of Apartments or Other Spaces in Buildings Subject to Common Ownership**

1. A separate registration case is created for each separately owned space or apartment in a building. All transactions which transfer, modify, terminate or burden rights to the separately owned apartment or space must be registered in the registration case of the apartment or space.

2. Owners of apartments or other spaces in buildings may register a foundation document for a housing association or condominium prepared in accordance with the applicable law.

### **Article 61. Leases**

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1. A right of temporary use or lease of immovable property for a term of more than three years must be registered. Other leases and subleases may be registered at the option of the parties to the lease or sublease, but no sublease may be registered unless the lease pursuant to which it is granted has been registered.

2. If a portion of a unit of immovable property is leased, the documentation submitted for registration must include a survey or floor plan showing the leased portion of the immovable property.

3. A prohibition on assignment, sublease, mortgage or other disposition of a lease by the lessee must be noted by the Registrar in File B and any document attempting to assign, sublease, mortgage or otherwise dispose of all or any portion of the immovable property subject to the lease will be refused registration without the lessor's written consent.

4. A lease may be canceled in the Registration Book only upon the following:

a) expiration of the term;

b) occurrence of a condition;

c) lawful termination of the lease by order of a court or arbitration court; or

d) upon application of the lessor and lessee, voluntary surrender of the lease by the lessee.

5. No lease shown in the record to be subject to a sublease or mortgage may be voluntarily surrendered by the lessee to the lessor prior to expiration of its term and canceled in the Registration Book without the consent of the holder of the sublease or mortgage.

#### **Article 62. Subdivision or Merger of Land Plots**

1. No subdivision, sale or other disposition of less than an entire registered unit of immovable property shall be registered in the absence of (1) certification from the responsible authorities that the subdivision has been permitted in accordance with applicable laws, and (2) issuance of new cadaster or building numbers for the units of immovable property resulting from the subdivision.

2. No merger of two or more registered units of immovable property shall be registered without issuance of a new cadaster or building numbers for the resulting unit of immovable property and cancellation of the cadastre or building numbers of the merged units.

3. No subdivision or merger of registered units of immovable property shall be permitted without the written consent of any persons holding mortgages burdening the units to be subdivided or merged.

4. In accordance with the written instructions of the authority responsible for approving a subdivision of immovable property, the Registrar shall enter into the B Files of the resulting units of subdivided property those burdens which were registered against the original

unit and are to be carried over against the resulting units. Entry of burdens into the B File of subdivided units shall be subject to appeal to the Local Registration Commission.

### **Article 63. Servitudes**

1. Any document creating a servitude must contain the following information:

- a) a description of the nature of the servitude;
- b) if for a limited term, the expiration date of the servitude;
- c) a legally sufficient description of the land or other immovable property, or portion thereof, burdened by the servitude; and
- d) a legally sufficient description of the land or persons receiving the benefit of the servitude.

2. Servitudes shall be registered in the registration case of the immovable property burdened by the servitude.

3. In the absence of a specified term there shall be a legal presumption that the servitude is perpetual and intended to be binding upon all subsequent owners and users of the immovable property. In the absence of a limitation describing the part of the immovable property burdened by the servitude, there shall be a legal presumption that the servitude burdens the entire unit of immovable property.

### **Article 64. Restrictions on Use; Town Planning Regulations**

1. For purposes of this Article, restrictions on use include, without limitation, any restrictions on design or construction of land, structures or other facilities or any affirmative obligation imposed on the owner or user of land in connection with the construction or ongoing use and operation of any building, structure or use of land.

2. Restrictions on the design, construction or use of immovable property created or imposed by act of architectural or planning authorities, other than restrictions which are applicable to immovable property generally and are set out in a law or regulation, shall be registered in File B. It shall be the responsibility of the architectural or planning authority creating or imposing the restriction to register such restriction and such restriction shall not be effective against subsequent users or owners of the immovable property in the absence of such registration. No registration fee shall be imposed for the registration of use restrictions created or imposed by local architectural or planning authorities.

### **Article 65. Bankruptcy**

Trustees, receivers or other officials legally empowered under the laws of Belarus to supervise the liquidation or reorganization of a bankrupt person or juridical entity are obliged to

register notice that the bankrupt person or juridical entity is incapable of disposing of rights to immovable property of which he or it is the registered holder. Upon receipt of such notice the Registrar shall enter a notation in File B and file the original notice in File C of the immovable property affected.

#### **Article 66. Adverse Claims**

1. Any person claiming a right to immovable property which conflicts with any registered right to the immovable property may register a written notice of claim setting forth the nature of the claim. Such notice of claim shall be registered by the Registrar as a memorandum of claim in the File B as a burden on the immovable property.

2. For a period of not more than sixty days from the date of registration a memorandum of claim constitutes notice of the claim to any person thereafter dealing with the immovable property. Upon expiration of such 60 day period such notice of claim is stricken from the record and of no further legal effect unless the claimant has submitted to the Registrar for registration an order of court or arbitration court suspending further transactions in the immovable property. Such order shall be filed in File B.

3. Any adverse claim registered under the prior paragraph and not stricken from the Registration Book by the Registrar shall be stricken from the Registration Book within fifteen days of submission of a judgment or decree of a court or arbitration court declaring such claim invalid unless suspension of transactions in the immovable property is continued by order of any court or arbitration court pending appeal of the decision or order.

4. Any person who shall be guilty of filing willfully false claims shall be liable for any damages and costs incurred by the holder of the registered right to immovable property.

#### **Article 67. Judgments or Other Orders of Courts**

1. A judgment of a court or arbitration court affecting rights to immovable property may be registered in File B from the time issued regardless of whether it has become effective. In the event that a judgment does not become effective it will be treated as a notice of adverse claim under Article 66 of this law.

2. Notwithstanding that a judgment or order of a court or arbitration court may be registered in File B, persons acquiring rights to immovable property by order of a court or arbitration court, or through any other procedure sanctioned by law for enforcing claims or charges against immovable property, shall be registered as holder of the right only upon satisfaction of the conditions specified in the judgment or decree and completion of such procedures as may be required under the laws of civil procedure.

#### **Article 68. Mortgages**

1. The priority of a mortgage shall be determined by the date of its registration even if a judgment enforcing the mortgage is later registered.

2. If under the terms of a mortgage the borrower is prohibited from disposing of the immovable property subject to the mortgage, or from placing another mortgage on the

immovable property, such prohibition shall be noted in the Registration Book by the Registrar. Any document attempting to dispose of the immovable property subject to such restrictions will be refused registration without the consent of the holder of the mortgage.

3. No document which attempts to increase the principal amount, interest rate or term of a mortgage shall be registered without the consent of the holders of later registered mortgages on the same immovable property unless such increases were explicitly permitted in the first mortgage.

4. If a claim or other obligation secured by a mortgage is transferred by a creditor, an assignment or other transfer of the creditor's rights under the mortgage is not required to be registered and the mortgage shall be effective and enforceable by the creditor's transferee against the mortgagor and all subsequent holders of registered rights.

#### **Article 69. Powers of Attorney**

Creation, transfer, modification or termination of registered rights to immovable property may be made pursuant to a power of attorney only to the extent permitted by law. No document creating, transferring, modifying or terminating rights to immovable property by power of attorney may be registered unless the power of attorney in legal form is presented to the Registrar and registered together with such document.

#### **Article 70. Rights of Preferential Purchase and Options to Purchase**

1. Preliminary contracts to purchase, rights of preferential purchase and options to purchase are registered by registration of the preliminary contract or other agreement establishing such rights upon application of the both the grantor and the beneficiary of the rights.

2. If a right of preferential purchase or option to purchase is contained in a lease or other registered document the existence of such right must be noted by the Registrar in the Registration Book separately from the existence of the lease or other registered document.

3. It is not necessary to register rights of preferential purchase created by law.

#### **Article 71. Guardianship Or Other Relationship of Trust**

1. Any right to immovable property held in guardianship or other position of trust shall be registered only upon submission to the Registrar of the documents creating and defining the relationship of trust, including contracts or orders or judgments of a court. The Registration Book shall contain a notation that the property right is restricted by a relationship of trust.

2. Minors and others lacking civil capacity may be registered as holders of rights to immovable property but the lack of civil capacity must be noted in the Registration Book by the Registrar.

#### **Article 72. Rights Arising From Death**

Rights arising from the death of the holder of a right to immovable property may be registered upon presentation to the Registrar of (1) such documentation as may be necessary to create the right under the law of the Republic of Belarus, and (2) evidence in the accepted form of the death of the person through whom the property right has arisen. Registration of a right to immovable property arising through the death of a person shall be deemed to have been accomplished on the date of the death regardless of when the registration of documentation actually occurs.

### **Article 73. Prescriptive Acquisition**

1. Rights to immovable property may be obtained through prescriptive acquisition to the extent permitted by the civil legislation of the Republic of Belarus. From the time the rights arise, rights to immovable property arising from prescriptive acquisition must be registered to obtain the protections conferred by this law.

2. The Registrar may register a right arising from prescriptive acquisition upon demand of the claimant not less than thirty days following notice to the registered holder or holders of the rights affected by the claim. Prior to registration, the Registrar may refer any claim of rights by prescriptive acquisition to a court for resolution. Pending registration or resolution of claims by a court, the claimant may register his claim as an adverse claim under Article 66 of this law.

3. Claims of rights arising through prescriptive acquisition which result in subdivision, merger or alteration of the boundaries of land shall be reflected in appropriate modifications to the registration cases of all the land affected in accordance with the rules on subdivision or merger of land provided in this law.

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## **Section 7. Registration Fees and Other Charges**

### **Article 74. Fees and Charges to be Determined By Commission**

Fees and charges for registration of rights or other services provided by the local Registry shall be established in a schedule by the National Commission.

### **Article 75. Principles of Fee Determination**

In establishing fees and charges of the registries the National Commission shall consider the following general principles:

- a) fees and charges shall be established with a view to encouraging use of the system and making the advantages of the system available to all property owners regardless of wealth or income;
- b) fees for registration services shall be established to compensate for actual costs;

- c) fees may include a component intended to amortize the start up cost of the system of registration, but such costs shall be amortized over a period of not less than fifteen years;
- d) within reason, registration fees may be variable graduated rates tied to the value of the transaction to be registered.

#### **Article 76. Allocation of Revenues**

1. All revenues from fees and charges collected by the local Immovable Property Registries shall be allocated as follows:

- a) first, the required contribution shall be allocated to the assurance fund created under Article 81, below;
- b) second, the actual costs of the Registrar and the Local Registration Commission shall be paid;
- c) third, the remaining amount, shall be divided as follows:
  - (1) [ ]% to the budget of the local jurisdiction
  - (2) [ ]% to the local Registrar for training, upgrading and improvement of the local system;
  - (3) [ ]% to the budget of the National Commission;
  - (4) [ ]% to the budget of Ministry of Housing and Communal Services;
  - (5) [ ]% to the budget of the State Land Committee.

2. The National Commission shall issue regulations governing the ownership of data entered into the Registration Book and the rights of the respective owners of such data with respect to use or sale of such data for commercial purposes.

#### **Article 77. Disbursement of Revenues**

All revenues shall be maintained by the Registrar in a segregated account and shall be remitted to the account of the National Commission on a quarterly basis after deducting the amounts provided for in items 2, 3 (a) and 3 (b) of Article 76. The National Commission shall make such further disbursements of revenues as are called for under this law. The National Commission shall have the right to audit the books and records of local Immovable Property Registries.

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#### **Section 8. Indemnification**

#### **Article 78. Liability for Damages**

1. The Immovable Property Registry is liable for any actual losses or damages sustained by any person due to omission, mistake or deliberate malfeasance in performance of the duties of the Registrar. Any claim against the Registry under this Article is brought in a court located in the jurisdiction in which the Registry is located.

2. For purposes of valuing losses suffered under paragraph one of this Article the immovable property of the claimant shall be valued as of the time the claim is made, and not as of the time of registration.

3. All claims for losses shall be based upon an independent appraisal of the loss.

4. The Registrar is not personally liable for errors or omissions occurring in good faith in the course of performance of his duties but shall be liable for deliberate malfeasance in performance.

#### **Article 79. Limitations**

Any claim against the Immovable Property Registry must be brought within three years of the date that the claim arose or the date on which the claimant, acting with normal diligence, reasonably should have become aware of the claim.

#### **Article 80. Exceptions to the State's Liability**

The Immovable Property Registry shall not be liable to any claimant for losses:

- a) caused by the claimant's own negligence;
- b) caused by mistake or omission of a notary; or
- c) based upon an error in a boundary survey or description.

#### **Article 81. Assurance Fund**

1. An assurance fund is established for the compensation of losses or damages under Article 78. The fund shall be established and administered by the National Commission as a state owned juridical entity. The portion of the fees collected by each Registry to be deposited in the assurance fund shall be established from time to time by regulation of the National Commission. If such amounts are insufficient to pay claims, the Government of the Republic of Belarus shall make special allocations to the assurance fund from the budget of the Republic of Belarus.

2. At its discretion, the National Commission may substitute for the assurance fund an insurance policy underwritten by a competent and reputable insurance company of sound financial standing insuring the activities of the Registries and agreeing to pay the liabilities of the Registries in accordance with the provisions of this law. Premiums for such insurance policy or policies shall be paid from the portion of the revenues allocated to the assurance fund under Article 76.

3. The National Commission may by regulation adopt additional regulations dealing with the creation and management of the assurance fund described in this Article.

#### **Article 82. Reimbursement of Assurance Fund**

The assurance fund shall have the right to be indemnified and reimbursed by any person who through fraud, negligence or dishonest act caused or contributed to any losses compensated from the assurance fund, and is authorized to bring in its own name such actions in court as may be necessary to enforce this provision.

#### **Article 83. Recourse to Transferor**

The act of sale or transfer of a right to immovable property for value constitutes a representation by the seller or transferor that he is legally capable of transferring the right and that the status of the right is as shown in the Registration Book. Nothing in this law is meant to prevent any person from making a claim in a court or arbitration court for losses or uncompensated damages against any person for fraud, misrepresentation or breach of contract in the transfer or sale of a right to immovable property.

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### **Section 9. Effectiveness and Transitional Provisions**

#### **Article 84. Effective Date of Law**

This section 9 shall become effective immediately upon enactment of this law. The remainder of this law shall become effective (1) in administrative districts of the Republic, on the date of certification by the National Commission that implementation of the system in the district is completed, and (2) in any event, in all administrative districts upon expiration of three years from the date of enactment of this law.

#### **Article 85. Period of Transition**

The system of registration of rights to immovable property will be implemented over a period of three years from the date of enactment of this law (the "transitional period"). During the transitional period the National Commission shall

- a) create the local Immovable Property Registries;
- b) prepare all necessary regulations, forms and procedures for implementation of this law; and

- c) implement the transfer of the existing registration records to the local Immovable Property Registries in accordance with the provisions of Article 88 of this law.

#### **Article 86. Registration of Rights Before and After the Effective Date of this Law**

1. Rights to immovable property which arise subsequent to enactment of this law but before this law becomes effective on the territory of an administrative district shall be registered in that administrative district in the manner provided at the time of enactment of this law.

2. Any right to immovable property arising subsequent to the effective date of this law on the territory of an administrative district shall be registered in the Immovable Property Registry of the district or municipality in which the property is located.

#### **Article 87. Unregistered Rights Existing Prior to Effectiveness of This Law**

1. A right to immovable property required to be registered under this law but legally existing without registration prior to the effective date of this law remains valid for a period of two years following the effective date, and upon expiration of such two year period shall be deemed legally null and void if not registered. During such two year period no transfer, modification or mortgage of such unregistered right may be made without first registering the right. Such right may be registered at any time after expiration of the two year period provided that to do so does not adversely affect the interests of a person who acquired a right to immovable property for value and in good faith as defined in this law.

2. Rights to immovable property which existed prior to the effective date of this law and which were lawfully registered in the manner provided prior to the effective date shall remain legally valid and the registration of such rights shall be transferred to the local Immovable Property Registry under the provisions of Article 88.

3. Upon expiration of a period of two years from the effective date of this law any objects firmly attached to land shall be legally deemed to be owned by the owner of the land unless contrary ownership rights are registered under this law. The Registrar may register as an adverse claim against the immovable property any rights which are in dispute at the time of expiration of the two year period, and such registration shall be sufficient to protect such rights pending resolution of the dispute.

#### **Article 88. Registration of Existing Rights in Immovable Property Registries; Transfer of Existing Registration Files**

1. Registration files pertaining to rights existing prior to the effective date of this law shall be transferred from the agencies by which they are held to the Immovable Property Registries in each district and municipality.

2. It shall be the responsibility of present agencies of registration to transfer all existing files on rights to immovable property to the Immovable Property Registry prior to

expiration of the transitional period. The means and methods of transferring the existing files shall be subject to regulations of the National Commission. Holders of existing rights shall not be held responsible for the transfer of files to the Registry. The place of original registration shall retain copies of all files transferred to the Immovable Property Registry for a period of five years following the date of transfer.

3. Transfer of the existing files of registration agencies shall include transfer of any original documents or data required to be entered into the Registration Book, including the following:

- a) Purchase and Sale Contracts;
- b) State Akt;
- c) Testamentary Documents; and
- d) Mortgages.

4. Transfer of existing files shall be complete by the expiration of the transitional period, but the failure of public authorities to transfer records to the Immovable Property Registries shall not adversely affect the holders of rights to immovable property.

5. No additional fees will be charged to holders of rights for transfer and registration in the Immovable Property Registry of rights which were registered before the effective date of this law.

#### **Article 89. Role of the State Land Committee In the Registration System**

1. During the transitional period and upon creation of the registration system the Land Committee shall have the following responsibilities:

- (a) cooperate in the creation of the local Immovable Property Registries through the transfer of records in accordance with Article 88 of this law, and otherwise;
- (b) issue cadaster numbers for land plots to be registered;
- (c) maintain the national land cadastre;
- (d) participate in supervision of proceedings for subdivision and merger of land parcels;
- (e) prepare and modify maps and surveys at the request of the Registrar;
- (f) create and supervise technical standards for boundary surveys and prepare boundary surveys at the request of applicants and the Registrar;
- (g) deliver such documents and certifications of ownership of land as may be requested by the Registrar.

2. The Land Committee shall be reimbursed for the costs of its support for the unified system from the revenues of system in the manner provided in Article 76 of this law.

#### **Article 90. Role of the Bureau of Technical Inventory in the Registration System**

1. During the transitional period and upon creation of the system of registration the Bureau of Technical Inventory shall have the following responsibilities:

- (a) cooperate in the creation of the local Immovable Property Registries through the transfer of records in accordance with Article 88 of this law and otherwise;
- (b) issue identification numbers for buildings and portions of buildings to be registered;
- (c) maintain the cadastre of buildings;
- (d) participate in supervision of proceedings for subdivision of buildings;
- (e) prepare and modify maps and surveys at the request of the Registrar and applicants for registration;
- (f) create and supervise technical standards for building subdivision surveys;
- (g) deliver such documents and certifications of ownership of immovable property as may be requested by the Registrar.

2. The Bureau of Technical Inventory shall be reimbursed for the costs of its support for the unified system from the revenues of system in the manner provided in Article 76 of this law.

#### **Article 91. Creation of Common Data Systems**

The National Commission shall prepare for approval of the Government a program for design and implementation of a common data base for state activities relating to immovable property, including cadaster, land management, building management, town planning, registration and taxation. The common data base for immovable property shall be based on the single, unique identifying number for each piece of immovable property as described in Article 23 of this law.

#### **Article 92. Territorial Effect**

This law will be effective on the entire territory of the Republic of Belarus and is implemented in a uniform manner throughout all districts and cities of the Republic of Belarus.

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- (b) issue identification numbers for buildings and portions of buildings to be registered;
- (c) maintain the cadastre of buildings;
- (d) participate in supervision of proceedings for subdivision of buildings;
- (e) prepare and modify maps and surveys at the request of the Registrar and applicants for registration;
- (f) create and supervise technical standards for building subdivision surveys;
- (g) deliver such documents and certifications of ownership of immovable property as may be requested by the Registrar.

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## **Section 10. Miscellaneous Provisions**

### **Article 93. Penalties**

Willful attempts by any person to tamper with the Immovable Property Registry or interfere with lawful registration in the Immovable Property Registry shall be criminal offenses under the laws of the Republic of Belarus.

### **Article 94. Notices**

The address provided to the Registrar by any holder of a registered property right and entered into the Registration Book shall be the address to which any notice required under this law shall be sent. Holders of registered Rights who do not reside in the jurisdiction in which the immovable property is registered shall provide the Registrar with the name and address of an agent within that district to whom notices shall be sent. Any notice required under this law shall be deemed delivered if sent to the addresses provided to the Registrar and entered into the Registration Book. The Registrar shall not be responsible for errors in addresses provided by holders of registered Rights or for the failure of such holders to change such addresses.

### **Article 95. Court Jurisdiction**

The court of general jurisdiction in the locality in which the Immovable Property Registry is located has jurisdiction to hear any claim arising under this law.