Federal Law No. 202-FZ: key changes to the law on shared-equity construction

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3. The Land Code of the Russian Federation
5. The Town-Planning Code of the Russian Federation

7. Federal Law No. 218-FZ of 13 July 2015 “On the State Registration of Immovable Property” (“the Property Registration Law”)


Law No. 202-FZ is designed to strengthen protection of the rights of participants in shared-equity construction, extend the powers of the Foundation for the Protection of Citizens Participating in Shared-Equity Construction (“the Foundation”) and eliminate legal uncertainty surrounding developer bankruptcy. Law No. 202-FZ makes the following key changes.

- There are changes to the rules for the termination of a pledge of a land parcel or a leasehold thereof which arose in connection with the conclusion of a shared-equity participation agreement: such a pledge is now terminated from the day of the state cadastral registration of an apartment building situated on the pledged land parcel. The registration entry concerning the pledge will be cancelled without the need for an application to cancel the pledge at the same time as the state cadastral registration of the apartment building takes place.

- Where maternity capital was used for the conclusion of an agreement on participation in shared-equity construction, that capital may be refunded in the event of the termination of the agreement. In addition, rules are introduced for the refund of maternity capital amounts used for the improvement of housing conditions where compensation is paid by the Foundation or an escrow account agreement is terminated.

- The state registration of ownership rights in a shared-equity property has been simplified. It may now be carried out by the developer without presenting a power of attorney. After the state registration of the ownership right of a shared-equity construction participant has taken place, the developer is obliged to transmit to the owner an extract from the Unified State Register of Immovable Property certifying the state registration of the ownership right of the shared-equity construction participant in the shared-equity property. In this case there is no need for the participant to submit a separate application for the state registration of the ownership right in the shared-equity property, but the registering authority places a registration inscription on the original of the shared-equity agreement or an agreement on the assignment of claims under the shared-equity agreement on the basis of an application from the participant in shared-equity construction.

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2 Part 8.1 of Article 13 of the Shared-Equity Construction Law

3 Part 8.1 of Article 15.5 of the Shared-Equity Construction Law, part 7 of Article 13 of the Foundation Law

4 Article 10.1 of the Family Support Law

5 Part 6 of Article 16 of the Shared-Equity Construction Law
A developer may use its settlement account to grant loans to another developer of which it is the parent company.6

There are changes to the rules governing how developers make amendments to the project declaration: such amendments now have to be made through the unified housing construction information system (UHCIS) on a monthly basis not later than the 10th of the month following a reporting month until information on the commissioning of all items of immovable property provided for in the construction plan has been entered in the UHCIS.7

It is established with respect to the creation of the register of problem facilities in the UHCIS that it must be possible for them to be categorized based on whether or not shared-equity construction participation agreements have been concluded in relation to the problem facilities, whether a problem facility is classed as a capital housing facility in accordance with the construction permit, etc.8 Law No. 202-FZ also defines the grounds for excluding facilities from the register of problem facilities: these include the commissioning of a facility and the payment of compensation in relation to a facility.9

The mandatory requirements for accreditation of arbitration managers by the Foundation in the case of the bankruptcy of a developer have changed.10 The Bankruptcy Law now directly provides for an arbitration manager to be removed from duties by a court upon the submission of a relevant application by the Foundation and for a new arbitration manager to be approved at the Foundation’s request. An arbitration manager whose accreditation has been annulled cannot be accredited again by the Foundation within one year.11

The law establishes a list of documents which an arbitration manager must submit to the Foundation in order for a decision to be made about the financing of measures for the completion of the construction of unfinished projects. That list includes, inter alia, the register of claims of construction participants, information on the inventory of the developer's property and the value of land parcels (rights therein), the means of securing the fulfilment of the developer's obligations, etc.12

It is provided that claims of construction participants against a developer for the transfer of residential units or vehicle spaces and non-residential units may be converted into monetary claims from the day on which the Foundation makes a decision to finance measures involving the payment of compensation to participants in shared-equity construction. In this case the agreement providing for the transfer of a shared-equity property will be considered to have been terminated and there is no need for the construction participant to repudiate the agreement unilaterally.13

Rules are laid down for the transfer to the Foundation of a developer’s rights in a land parcel with inseparable improvements situated thereon in the event that compensation is paid to construction participants. Within thirty days of a

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6 Clause 3 of part 3 of Article 18 of the Shared-Equity Construction Law
7 Part 4 of Article 19 of the Shared-Equity Construction Law
8 Part 1.3 of Article 23.1 of the Shared-Equity Construction Law
9 Part 1.4 of Article 23.1 of the Shared-Equity Construction Law
10 Clause 2.2 of Article 201.1 of the Bankruptcy Law
11 Clause 2.3 of Article 201.1 of the Bankruptcy Law
12 Clause 2.3.1 of Article 201.1 of the Bankruptcy Law
13 Clause 3 of Article 201.13 of the Bankruptcy Law
decision being made to finance the payment of compensation to construction participants, the Foundation would file with an arbitration court a notice of its intention to acquire the developer's rights to the land parcel, the unfinished construction project(s) situated thereon and inseparable improvements to the land parcel and rights to the design documentation. The Foundation would make a compensation payment to the construction participants as consideration for the property transferred.\textsuperscript{14}

There are changes to the grounds for refusing to issue a permit to commission a facility: now, a divergence of no more than 5\% between the area of a capital facility shown in the technical plan of the facility and the area stated in the design documentation or the construction project would not constitute grounds for such refusal provided that the number of storeys, units and vehicle spaces corresponds to the design documentation or the construction permit.\textsuperscript{15}

The range of persons on whose application cadastral registration and the state registration of rights may take place has been extended. In particular, an application may be submitted by the owner of the land parcel on which buildings, installations, units and vehicle spaces therein, unfinished construction projects and a unified immovable complex were situated if those facilities have ceased to exist and the owner of the facilities has been liquidated or his legal capacity has been terminated by reason of his death (and the right in the land parcel has not passed to other persons by inheritance).\textsuperscript{16}

If the owner of the land parcel has also been liquidated or his legal capacity has been terminated by reason of his death, the application may be submitted by a state body or a local government body.\textsuperscript{17}

The list of grounds for suspending the cadastral registration and state registration of immovable property has been extended to include cases where (a) the area of a building/installation which is specified in the commissioning permit or technical plan differs by more than 5\% from the area specified in the design documentation and/or the construction permit; (b) the number of storeys, units and/or vehicle spaces in a building/installation which is stated in the commissioning permit or design documentation does not correspond to the information given in the technical plan of a property; (c) the number of units indicated in the technical plan that have been formed/ altered as a result of the reconfiguration of units in an apartment building does not correspond to the number of units stated in the acceptance committee's certificate confirming the completion of the reconfiguration.\textsuperscript{18}

Law No. 202-FZ additionally establishes the following specific rules regarding the conduct of a legal appraisal of newly created properties to determine whether there are grounds for the suspension of the cadastral registration and state registration of rights in relation to them. Documents submitted for registration, in terms of their content, are checked by the state registrar of rights solely to determine whether information contained in the technical plan corresponds to: (a) the commissioning permit for the capital construction project (in the case of the state cadastral registration of a facility.

\textsuperscript{14} Clause 1, clause 3 Article 201.15-2\textsuperscript{2} of the Bankruptcy Law
\textsuperscript{15} Part 6.2 of Article 55 of the Town-Planning Code
\textsuperscript{16} Clause 4.1 of part 1, clause 2.1 of part 2 of Article 15 of the Property Registration Law
\textsuperscript{17} Clause 4.2 of part 1, clause 2.2 of part 2 of Article 15 of the Property Registration Law
\textsuperscript{18} Clause 61-63 of part 1 of Article 26 of the Property Registration Law
that had been commissioned) and/or design documentation for the capital construction project; (b) the certificate of the acceptance committee confirming the completion of the reconfiguration of units in an apartment building19.

Provisions have been introduced which limit the liability of the rights registration authority. It is not responsible for losses, including damage caused to life and health, which arose as a result of violations of town-planning law committed in the construction, renovation and commissioning of capital facilities in relation to which cadastral registration and state registration took place on the basis of appropriate documents20.

Rules are laid down regarding compensation payable to a construction participant who has a claim for the transfer of a residential or non-residential unit or a vehicle space. The amount of such compensation may now likewise be determined based on the amount of equity contributions paid (with account taken of the special considerations laid down in the Foundation Law)21.

It is provided that, in addition to cooperative members, compensation may also be claimed by citizens who have acquired a cooperative member’s share through inheritance if no compensation payment was made to the deceased cooperative member22.

A limit is placed on the financing of measures to complete the construction of unfinished products and infrastructure facilities: it cannot exceed the maximum amount of possible compensation payments to individuals who are construction participants and have claims for the transfer of units (residential and non-residential) and vehicle spaces23.

A new article is introduced about the sale of property transferred to the Foundation on the basis of the Bankruptcy Law24. Where a developer’s rights in a land parcel with inseparable improvements situated thereon are transferred to the Foundation, the property must be sold by the Foundation through auction. The starting price for the property would be set based on the report of an appraiser engaged by the Foundation. Funds received from the sale of the property, less the Foundation’s expenses, must be allocated between the Foundation and the budget of a Russian region or a public law entity in proportion to amounts of co-financing.

Above all, the numerous changes made by Law No. 202-FZ strengthen legal protection for participants in shared-equity construction, including by expanding the powers of the Foundation. Among other things, Law No. 202-FZ optimizes procedures governing bankruptcy proceedings in relation to developers, cadastral registration and the state registration of rights to immovable property, and addresses a number of gaps in the law regarding shared-equity construction.

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19 Part 13-15 of Article 40 of the Property Registration Law
20 Part 3 of Article 66, of part 4 of Article 67 of the Property Registration Law
21 Part 2, 2.1 of Article 13 of the Foundation Law
22 Part 11 of Article 13.3 of the Foundation Law
23 Part 3.1-1 of Article 13.1 of the Foundation Law
24 Article 13.4 of the Foundation Law
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