



LT in focus

Disputing cadastral values determined for properties

Court practice

On 30 June 2015, Plenum of the RF Supreme Court Resolution No. 28 “On issues arising during the courts’ deliberation of disputes over cadastral values determined for property” (hereafter –the Resolution) was published.

Cadastral values are used when calculating the following:

- Land tax
- Corporate property tax
- Personal property tax
- Rental payments for plots of land under state or municipal ownership

Currently, the cadastral valuation of land or property is carried out without consideration of the individual specificities of property items, leading to a situation in which it is often significantly higher than the market price. This situation served as one of the main factors in the adoption of the Resolution.

Furthermore, from 6 August 2014, the category of cases under discussion came under the jurisdiction of courts of general jurisdiction. Previously, cases on the review of cadastral value were examined by arbitral courts. Therefore, the arbitral practice, which has been tried and tested over a number of years, including key the legal positions of the RF Supreme Court, is not directly applicable.

This article analyses the procedure and most interesting amendments for disputing cadastral values determined for properties

Procedure for disputing cadastral values determined for property

One of the main legal developments from the Resolution is a move from the rules of litigation when deliberating disputes on cadastral value to the rules for public law cases.

From 15 September 2015, court disputes of cadastral value will be conducted in the manner established by the RF Administrative Procedures Code.

In accordance with the Resolution, the results of the determination of cadastral value may be disputed through the filing of the following formal requests:

- On the designation of a property item’s market value
- On amending the cadastral value in relation to the discovery of unreliable information, including technical and/or cadastral mistakes
- On the dispute of decisions or actions/lack of action of the commission on cadastral disputes (hereafter – the Commission)



Limitations on the right of lessees to dispute the cadastral value of property on lease

The Resolution diminishes the rights of lessees of property under state or municipal possession.

Lessees of property under the possession of state or municipal ownership may file an application to dispute the results of the determination of cadastral value only in two circumstances:

- Firstly, when the rental price is calculated on the basis of the cadastral value of item of property and the owner consents to a review of the cadastral value by contract or in another written form
- Secondly, when the lessee has the sole right to purchase or lease a plot of land, if the price of the purchase or rental price is calculated on the basis of the cadastral value of the property

Thus, the Resolution effectively deprives the lessee of the right to dispute a property's cadastral value without the owner's consent to a review of the cadastral value, as well as in the instance of the purchase of another property item, aside from a plot of land, at a price equal to the cadastral value of the property item.

List of entities which are respondents in disputes on cadastral value

A clear list of entities, which are interested parties in disputes on the cadastral value of property or administrative respondents, is included in the Resolution. These may include:

- A state body or local authority approving the results of the determination of cadastral value
- A state body conducting state cadastral valuations

Prior to the adoption of the Resolution, claims were frequently dismissed due to the indication of the wrong respondent.

Period in which an application for a review of cadastral value may be filed

An application for a review of cadastral value may be filed with a court five days from the date of the entry of the disputed results of the determination of the cadastral value of the property into the State Property Cadastre, but without the entry of amendments to the cadastral value of the property therein. However, the expiration of the stated period does not form grounds for a refusal to accept an application insofar as it can be restored through court procedures.

Pre-trial procedure for the dispute of cadastral values

The obligatory observance of a pre-trial procedure for disputes on cadastral value with the aim of production before the court is stipulated for legal entities

In relation to Article 20.48 of the Law on valuation activities, the dispute of results of the determination of the cadastral value of property by legal entities is only carried out in the instance that an application for the review of cadastral value is dismissed by the Commission, or if the application was not deliberated in the indicated period.

It is also necessary to take into account that if an application has not been accepted for deliberation by the commission, the pre-trial procedure is not considered to have been observed and the applicant may not appear before the court.

The date upon which the market price should be established when disputing cadastral value

When disputing the results of the determination of cadastral value, the market value of property should be established on the date upon which its cadastral value was determined.

The Resolution essentially formalises a regulation existing in court practice.

When using the services of valuers, the date upon which the market value of the property should be determined should be clearly indicated. An error in this date will lead to a refusal to review the overestimated cadastral value.

Court investigation of the property valuation report and commissioning of expert evidence

In relation to the Resolution, fairly wide-reaching powers have been granted to the court, allowing for a reduction in the risk of the approval of unfounded formal requests.

In particular, the court may check the property valuation report for compliance with the legislation regulating valuation activities in Russia, including federal valuation standards.

In instances in which doubts emerge over the reasonableness of a report on the credibility of the determination of market value, the court discusses these circumstances, even if the parties do not refer to them.

In order to resolve doubts, it is possible to commission expert evidence in the course of legal proceedings. Expert evidence should be aimed at the establishment of the market value of a property item and should include a check of the report on the compliance with the requirements of the legislation regulation valuation activity in the Russian Federation.

Another important consideration of the Resolution is the designation of a range of questions, which the court can put before an expert, including on the valuator's observance of the requirements on the method of calculating the market value of a property item; the accuracy of the determination of the factors affecting the value; the adequacy of the information used by the valuator; and others.

The Plenum of the RF Supreme Court formalized the right to independently establish the market value, even if its amount differs from that proposed by the applicant. In this sense, concerns exist over the court's potential to determine a market value of an even higher amount than the disputed cadastral value established in the State Property Cadastre.

In the Resolution, the Plenum of the RF Supreme Court also considered the possibility of the parties coming to an agreement (despite the fact that state and municipal authorities may be respondent in disputes).

Date from which the cadastral value established by the court applies

The cadastral value established by the court is applied for the calculation of the tax base for the tax period in which the application for the review of the cadastral value is submitted to the Commission. This practice corresponds with the most recent amendments to Article 378.2 of the RF Tax Code.

Allocation of court costs

When satisfying the demands for the establishment of the market value of property, the court costs are recovered from the body that approved the results of the determination of the cadastral value.

It should also be noted that the Plenum has clarified that the court costs are allocated to the applicant if its official request is not disputed by the interested party or administrative responded involved in the case.

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We hope that you will find the information in this issue both interesting and useful. Our specialists are available to answer any questions you may have with regard to the contents of this issue.

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