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Realtor services in the Republic of Kazakhstan

The article deals with certain issues related to the specifics of regulating realtor activity. The authors of the article paid attention to the study of various aspects of the legal relations arising from the contract of purchase and sale, exchange, hiring of premises. The article deals with topical problems of realtor services' improving. In the legal literature there is no universally recognized legal norm regulating realtor activity in the Republic of Kazakhstan. This activity is regulated solely by the norms of the Civil Code of the Republic of Kazakhstan on provision of paid services. The essence of realtor activity as a specific business process, which is an indispensable element of the market infrastructure ensuring the efficient functioning of the real estate market, is disclosed. The authors made a legal analysis of the civil legislation of Kazakhstan regulating realtor activity and on this basis proposals aimed at improving legislation were made.

Keywords: civil law, service, realtor activity, rent, residential and commercial real estate, property rights, sales contract.

Realtor activity deserves special attention due to the fact that this activity is associated with life value of every person – his/her housing. Nowadays this activity is in demand, but has a large number of complaints about the content and quality of completing by both clients and real estate agents at the same time. Realtor firms have a long history. Each era has its own attributes, features and differences. In prerevolutionary times realtor services were used by the rich and wealthy industrialists and landowners, however, in the period of the USSR, on the contrary, the all citizens appealed to real estate agent (secretly). Only in a free market conditions broker's services have become legitimate and equally accessible to everyone. The concept and content of realtors' activity mainly consist of intermediary services for purchase and sale, the proportion of other transactions that real estate agents help to conclude with immovable property (mainly residential housing) is relatively small. Mostly abroad, realtors are engaged in purchase and sale. In developed countries, more than fifty percent of property is privately owned which is the most important economic resource of any country, but only effective property management gives profitability and economic effect on the basis of complex, i.e. system approach.

The market of realtor services and the level of their development characterize the degree of perfection of the national economy. In the current conditions the formation this of market is regarded as one of the main factors of transition to market conditions, stimulating other sectors of the economy. Rapid privatization created a significant layer of owners in a short time, actively involved in market relations. Now the real estate market is taking more and more civilized and organized forms after the stormy start. Representatives of the realtor market are actively adopting foreign experience in the field of real estate. This applies not only to professional realtors, but also to any enterprises and all citizens who learn to manage their own property effectively, carrying out mortgage operations, purchase and sale, donating, etc [1].

The scale and pace of development of the market for realtor services is strongly affected by the underdevelopment of market infrastructure. The limited amount of land resources and problems complement the list of barriers, which prevent objectively the entry of new entities into the real estate market.

Realtor services are a whole range of different activities aimed at ensuring the effectiveness of the real estate market functioning and at addressing one of the most important needs of people- the needs to improve housing conditions.

The housing, as it was noted above, is basic human need, and in the absence of housing, it is impossible, in principle, to talk about full and secure life. In this regard, housing should be assumed as a strategic object, in this regard the state is obliged to provide minimum conditions for the possession of housing for every citizen of our state.

Realtor services cover the whole real estate sphere. Consumers of realtor services are individuals (citizens) and legal entities. The main ones are individuals, who account for more than 80 % of the services provided.

Demand for realtor services in modern conditions is becoming a real fact and a notable achievement of market reforms in the CIS. Realtor services today is a professional entrepreneurial activity officially recognized in all the states of the commonwealth.

Transition to the market structure of society causes transformation of property, which is transformed from one-dimensional state one into a multidimensional complex consisting of state and private property. The mechanism of property management is changing, and as a result, the market of real estate services is being formed.

Formation and development of realtor services' market in modern conditions requires new approaches and methods that correspond to the changed conditions of economic activity, therefore, the study of this market is relevant and well-timed.

Realtor activity is a professional activity in providing services when performing transactions with objects of immovable property for a certain remuneration, which is carried out on a permanent basis. Realtor activity recognizes also other commercial professional activities in the immovable property market. Therefore, realtor services are services which are provided when realtor activity is carried out.

There are two types of realtor firms. The first, the most common type of realtor firms are the firms that provide only intermediary services in the real estate market. This is a small organization, which employs about a dozen of realtors (often even less) engaged in «seeking» suitable options for purchase or sale of immovable property's objects, their exchange, hiring. Such firms operate in most cities and not necessarily in large cities, they exist there, where demand for the purchase, sale, exchange, hiring of a housing is on «sufficient» level for the firm.

The second type of realtor firms could be barely called «realtor» one. They are not only engaged in providing intermediary services for various transactions with immovable property, but they can also participate in transactions. These firms participate in the construction of residential complexes on a shared basis, invest money in construction, buy housing. These are quite large companies, in terms of number of employees they can be referred to as «medium business». As a rule, they have a complex organization and a structural subdivision, possibly both branches and representative offices. Such firms can be called «mixed» because, as it has already been noted, they are engaged not only in realtor activity, but also in other real estate business.

At present, the term «realtor» is increasingly used, which means the person who provides intermediary services in the immovable property market. The term itself appeared in the United States in 1916, when it was registered as a special sign for the association of realtors. Realtors stood out among other immovable property dealers, because they were engaged exclusively in «intermediary» services, as a rule they did not act as a party of the transaction. The concept and content of realtors' activity mainly consist of intermediary services for purchase and sale, the proportion of other transactions that real estate agents help to conclude with immovable property (mainly residential housing) is relatively small. Mostly abroad, realtors are engaged in purchase and sale. Realtors in our country provide not only the intermediary services of purchase and sale, but also of hiring a dwelling [2; 75].

The activity of realtor as appointee is carried out on the basis of agency contract concluded with the consumer (appointor), providing the laying on realtor an obligation to carry out on behalf and at the expense of the appointor with respect to his/her or immovable property used by him/her or against him/her personally certain judicial actions. At the same time, in the latter case, the activity of appointee in relation to appointor personally is a subject of consideration as a realtor activity only on the condition that it is connected with the acquisition or alienation by the appointor, acceptance or transfer to them for temporary or permanent use in the future specified in the contract or not determined at the time of the conclusion of contract of immovable property.

Other types of realtor services include:

- 1) the activity of a realtor as a dealer;
- 2) the activity of a realtor as an intermediary in concluding transactions with immovable property or rights on it between third parties;
- 3) the activity of a realtor in the organization immovable property trade;
- 4) the activity of a realtor on the creation of separate immovable property facilities with aim to their subsequent sale, transfer to a reimbursable use;
- 5) the activity of a realtor for trust management of immovable property;
- 6) the activity of a realtor for the provision of consulting services, market research services, other paid services, associated with the civil turnover of immovable property etc.

Based on the foregoing, the content of real estate services can be disclosed as follows:

– provision of information in accordance with the consumer's request for the current state of the immovable property market, real estate objects;

- departure and inspection, if necessary photographing the property;
- agreement on the initial value of the property;
- preliminary acquaintance and analysis of documents for the readiness to conduct a transaction with the immovable property object;
- provision of information on pre-sale preparation, preparation for leasing of immovable property object;
- search for a buyer or tenant for a property;
- search for variants of the property;
- the organization and carrying out of displays of immovable property object;
- organization and implementation of business contacts and negotiations with potential buyers or tenants;
- organization of the stages of the transaction with the immovable property object;
- assistance in the preparation and execution of documents related to the provided realtor service, at the request of the consumer.

Due to the fact that the realtor activity exists a short time, there are many problems arising while providing realtor services. This is due to the lack of special regulation of realtor activity, which should be able to regulate this type of entrepreneurial activity. Although there are assertions the scientific literature, according to which there is no need for a special regulation as such activity is regulated by the Civil Code of the Republic concerning either agency, or the paid services. The lack of unity of opinions on the legal nature, concept and essence of realtor activity entails a number of problems arising in the process of realtor activity.

Realtor activity in the Republic of Kazakhstan, which has been developing in recent years, in our opinion, has problems in practice due to the lack of special regulation. According to the deputy of the Parliament Tursunbek Omurzakov, in Kazakhstan realtor activity is not regulated by the state. The United Association of Realtors of Kazakhstan plays a weak role. As a result, there is no reliable information about the size of the realtor market. There is a large number of non-professional participants in the market who work outside the legal field without concluding relevant documents with their clients. This applies to landlords who do not register as an individual entrepreneur and do not pay taxes on their income. The current situation leads to a flagrant violation of the rights of our citizens: the same apartments are rented to several clients, many families are deprived of money made as an advance payment, families with children are evicted by owners without warning and reimbursement of expenses. In this case, the absence of contracts leads to impunity for unscrupulous landlords and realtors. Many realtors are not responsible for the legal purity of the transaction. The information about the «black» list of realtors and landlords is unavailable for citizens. In addition, the informal sector of rental housing creates threats to public and national security in cases where illegally leased apartments are used by criminals. In his opinion, it is necessary to determine the state's position on the formation of mechanisms of state regulation or self-regulation of realtor activity; increasing of professional level of realtors; informing of the public about the «black» list of realtors and landlords; strengthening of the work to identify the facts of illegal rental housing [3; 259].

There is proposed and justified definition of the concept of realtor activity in the science of civil law as an independent type of entrepreneurial activity in the provision of services carried out in the interests of the client, the subject of which is the commission of acts by realtor to assist the client in concluding a certain transaction on real estate, minimization of its transaction costs and risks, by finding counterparty, conducting preliminary negotiations with him/her, as well as performing other actions of an exclusively factual nature in order to achieve this goal. Thus, by nature, this activity should be regulated by the law on paid services, however contracts concluded by realtors with customers do not always protect the rights of the consumer services. Judicial practice traditionally considers disputable situations, without giving estimates to obviously incorrect contracts. One of the conditions of contracts should be the satisfaction of the client's needs. The right of realtor on remuneration should arise only in the case of an agreed transaction concerning real estate between the client and the counteragent, found by a realtor. Only in the case of transaction, the satisfaction of the client's needs happens, and the result of realtor activity is a boon. Otherwise, realtors take profit, not meeting the needs of customers. There is a necessity to resolve the issue of secondhand costs, incurred by realtor, which should be treated as a business risk at the legislative level. It is necessary to study and, if possible, use the experience of foreign countries, where realtor services have long and effective experience with consumer protection mechanisms, for example, such responsibilities of realtors, existing in the countries of the Anglo-Saxon legal family: to act exclusively in the interests of the client; disclose all information to the client; follow the customer's legal instructions; show diligence, competence and discretion. It is necessary to

consolidate legislation the mechanism of protection of civil rights and legitimate interests of clients of realtors, as well as third parties (clients' counterparts). This mechanism consists, firstly, in securing the duties of realtors in the law, secondly, in fixing the grounds for the loss of the realtor's right to remuneration in law; thirdly, in fixing the grounds for the emergence of realtors duty to recover damages to customers, as well as third parties. The nature and specific features of the agreement on realtor services requires deep study. It is possible, that the specifics of the object of this agreement may require the allocation of an independent type of civil law contract for paid provision of realtor services.

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Қазақстан Республикасындағы риэлтерлік қызмет көрсету

Мақалада риэлтерлік қызметті реттеудің ерекшелігімен байланысты жекелеген мәселелері қарастырылды. Авторлармен сатып алу-сату, айырбас, тұрғын үйді жалдау шарттарынан туындайтын құқықтық қатынастардың әр түрлі қырлары зерттелген. Мақала риэлтерлік қызметті жетілдірудің өзекті мәселелеріне арналған. Заң әдебиеттерінде Қазақстан Республикасында риэлтерлік қызметті реттейтін, жалпымен танылған құқықтық нормалар жоқ. Аталған қызмет тек қана ҚР Азаматтық кодексінде өтемілі қызмет көрсету туралы нормалармен реттеледі. Мақалада нарықтық инфрақұрылымның міндетті элементі болып табылатын риэлтерлік қызмет нарығының қызмет ету тиімділігін қамтамасыз ететін, бизнес-үрдістің ерекшелігі ретінде риэлтерлік қызметтің мәні ашылған. Авторлармен риэлтерлік қызметті реттейтін Қазақстанның азаматтық заңнамасы құқықтық тұрғыдан талданып, соның негізінде заңнаманы жетілдіруге бағытталған ұсыныстар мен тұжырымдамалар құрастырылды.

Кілт сөздер: азаматтық құқық, қызмет, риэлтерлік қызмет, жалдау, жылжымайтын мүлік, тұрғын үй және коммерциялық жылжымайтын мүлік, меншік құқығы, сатып алу-сату шарты.

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Риэлторские услуги в Республике Казахстан

Статья посвящена актуальным проблемам совершенствования риэлторской услуги. Рассмотрены отдельные вопросы, связанные с особенностями регулирования риэлторской деятельности. Уделено внимание изучению различных аспектов правоотношений, возникающих из договора купли-продажи, обмена, найма жилого помещения. В юридической литературе не существует общепризнанной правовой нормы, регламентирующей риэлторскую деятельность в Республике Казахстан. Данная деятельность регулируется исключительно нормами ГК РК о возмездном оказании услуг. Раскрыта сущность риэлторской деятельности как специфического бизнес-процесса, являющегося обязательным элементом рыночной инфраструктуры, обеспечивающего эффективность функционирования рынка риэлторских услуг. Авторами сделан правовой анализ гражданского законодательства Казахстана, регулирующего риэлторскую деятельность. Разработаны предложения, направленные на совершенствование законодательства.

Ключевые слова: гражданское право, услуга, риэлторская деятельность, аренда, недвижимое имущество.

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Репозиторий КАРГУ