

THE ROLE OF REAL PROPERTY IN THE DEVELOPMENT OF DWELLINGS

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Annotation

This paper analyses the legal and economic basis of real property development as well as deals with the forms and composition of real property. Based on the data of Cadastre Information System, there has been estimated the structure of real property and its distribution by ownership, as well as by purpose of its use. The study assesses the connection between the composition of real property and the type of housing. The article concludes that the existing normative acts and the legally divisive relationship between households wanting to get housing adequate to their requirements and the real property owner in which the dwelling is located, complicates efficient use and long-term development of housing as part of real property. In order to address the issues related to dwelling development, it is necessary to work out normative acts that would guarantee households possibilities to obtain dwellings, as well as an opportunity for real property owners to develop them for profit.

Introduction

The object of the study is a dwelling as real property. The objective of the paper is to analyse the real properties used by households as dwellings and to identify the types and composition of housing. To estimate the structure of real property there have been used the data from Cadastre Information System, but the data on dwellings have been obtained from the Central Statistical Bureau database. In the study there has been used the monographic descriptive method, while the methods of synthesis and analysis have been used to analyse the data of real property. The novelty of the paper lies in the fact that the dwelling is assessed as part of real property, as well as its connection with the composition of real property has been analysed.

Results

In economics, the real property is a major resource of the production and it defines the development of country's economic, political situation, as well as social welfare. In countries of agrarian development the main value is agriculture land, in industrial countries they are manufacturing facilities or land with valuable minerals, and so on. Political system in the country will determine ownership - state, private, limited group of people, etc. While the state and the social welfare of the population is directly related to the real property, including the availability and quality of dwelling. From an economic point of view, real property is also an object of the investment, in which investing can increase its value and make a profit.

Ownership is the full right of control over property – the right to possess and use it, obtain all possible benefit from it (Civillikums, 1937). This means that conceptually, the term "ownership" is the owner's rights to the object, but it does not include or describe the object itself (Grūtups, Krastiņš, 2002). In the legal literature there is an assumption that the term "ownership" in content of the Civil Law should be understood in two ways – either as a right in rem, or as a tangible thing. To avoid confusion of the use of the term "ownership", in early 1923, the term "property" was introduced to indicate a subject-matter, i.e. "movable or immovable property". But in the Civil Law (Civillikums) "immovable property" was described with the term "real property" (Grūtups, Krastiņš, 2002). The term "real property" comes from the Latin word "immobilija", which means - "the thing, which does not move" (Larson, 1991). According to the Civil Law the real property includes the land and buildings erected on it and are firmly attached to the land (Civillikums, 1937). This rule applies not only on buildings like living houses, farm houses, and so on, but also on any constructions on the surface, in the underground or underwater, including courts, bridges, dams, utilities, etc. The term "firmly attached to the land" means that the building can't be separated from the land without damaging its external constructions or affecting its nature or its separation related with disproportionate costs. (Grūtups, Krastiņš, 2002; Būvniecības likums, 1995). It follows that the real property is an aggregation of property including the land with buildings erected on it and are firmly attached (immovable) – buildings and engineering constructions, as well as with the mineral resources under it and the airspace above it (Civillikums, 1937; Grūtups, Krastiņš, 2002). The buildings and engineering constructions owned by landowner can be considered as land improvements and provides full use of the property.

However, there are exceptional cases where a building can be an independent property object if the building is:

1) built on the legally obtained land with appropriate purpose before the part of the Civil Law named Property Law came into force on September 1st, 1992, and the ownership rights for the land are restored to the former owners or their heirs;

2) obtained by privatizing enterprises of the state or local government, or object of the state or local government owned property;

3) built on a state or local government property land while the land had been granted to use during the land reform;

4) built as a side property of privatized object;

5) built on rental land and the lease agreement is signed for a period not less than ten years and includes rights to build (Civillikums, 1937; Grūtups, Krastiņš, 2002; Paršova, 2007).

In the above cases a “split” property has formed, when buildings which don't belong to the landowner are included in an independent real property, but the land and buildings owned by the landowner are included in an another real property. A building owned by another person is not an improvement but it is an encumbrance to the land (Grūtups, Krastiņš, 2002). In order to maintain the unified principle of land and buildings in long-term, laws and regulations for rights of first refusal and pre-emption were defined (Par atjaunotā Latvijas..., 1992; Paršova, 2007). First refusal rights are established to a landowner to alienate buildings on his land which belongs to another person. Also the owner of buildings, built on another person's land, has first refusal rights on the alienated land on which the building is located. In practice, however, the observance of these rules makes difficulties as on a single land unit may be built several buildings owned by different owners like residential houses, shops, office buildings or industrial facility, etc. In this matter alienating the land, all the building owners will have the rights of first refusal or pre-emption. If building owners exercise their rights, they would have to form a jointly owned property of a land and buildings, which means that the owner of a residential building would also have an undivided share of the store, manufacturing facility, and so on. In order to maintain all building owners' rights in the present amount, only the land property is formed as a joint ownership and the provision of the law does not reach its main goal – a jointly owned property of land and buildings. A favourable situation to formatting the united property of a land and buildings is where it is possible to divide a single land parcel and create land parcels for maintaining each building. V. Paršova has divided real property into three types – land, building and residential properties (Paršova, 2010). A land property consists of one or several land parcels and buildings which are owned by a landowner and built on the land, regardless of whether the land is built up or not (Fig. 1). According to the author, the part of real property which has been acquired until privatization of housing should also be considered – acceleratedly privatized apartments, artists' workshops and non-residential premises, which have not yet been given for scheduled privatization.

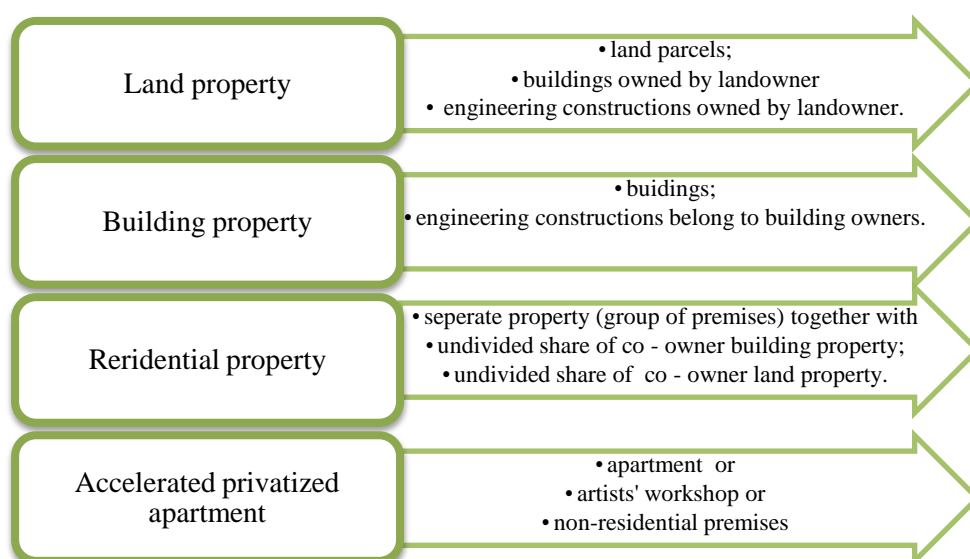


Fig. 1 Types and composition of a real property.

Real property registered in the Cadastre Information System means an object of immovable property (land parcels or buildings) or an aggregate of objects (land parcels and buildings), which can be recorded in a separate partition (Nekustamā īpašuma valsts..., 2005). Residential properties and accelerated privatised apartments are also considered real property (Fig. 1) – apartments, artist's workshop or non-residential premises, which has been transferred before scheduled privatization (Nekustamā īpašuma valsts..., 2005; Paršova, 2008; Sideļska, 2011). However, residential properties and acceleratedly privatized apartments in particular, like building properties may be regarded as exceptions of immovable property insight of the Civil Law. Residential property consists of a separate property (residential groups of premises), and an undivided share of co-owner building and a land parcel if it is not owned by another person (Dzīvokļa īpašuma likums, 2010; Paršova, 2008). As A. Grūtups (Grūtups) mentioned, residential groups of premises included into residential property cannot be an independent property as it is part of a building which is already a subject of property (Grūtups, 2002). In order to satisfy the high level of interest in the privatization of dwelling and to provide more rapid acquisition of property rights, it was possible to acquire apartments, artists' workshop and non-residential premises until privatization of a residential property (Par valsts un..., 1995). Acceleratedly privatized apartments were registered in the Cadastre register and that was compared to registration of real property in the Land Register and gave rights to dispose it off, donate, lease, inherit and obtain all possible benefit from it and so on. Although decisions on planned privatization of dwellings was adopted in 2006, the report of the Construction, Energy and Housing State Agency "On The Housing Privatization Process in 2008" (Būvniecības, enerģētikas un mājokļu valsts aģentūra „Par dzīvojamo māju privatizācijas norisi 2008.gadā”) shows that until December 31, 2008 13.96% of privatized apartments have not yet been privatized (Būvniecības, enerģētikas un mājokļu valsts aģentūra, 2009). Also the State Land Service (Valsts zemes dienests) in a report on data of the Cadastral Information System indicates that on March 1, 2013 planned privatization had not been started with 9.2 thousand acceleratedly privatized dwellings (Fig. 2) (Valsts zemes dienests, 2013).

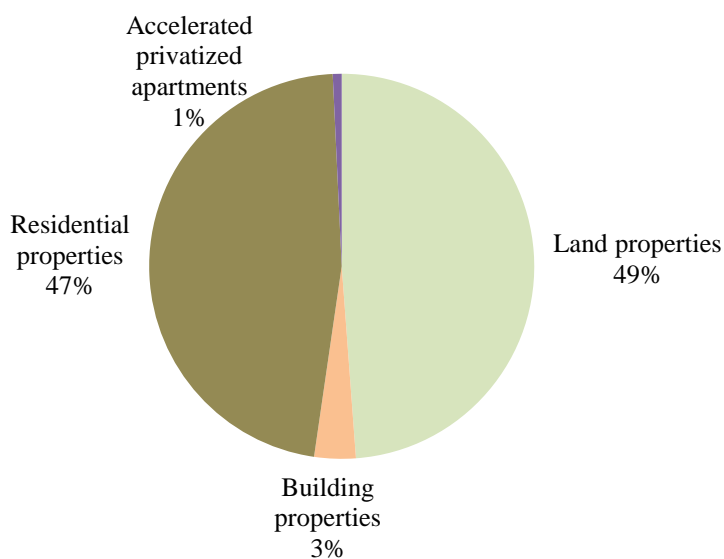


Fig. 2 Breakdown of real properties according to their types

On March 1, 2013 in the Cadastre Information System were recorded 1.229 thousands real property (Fig. 2), most of which – 49% of the total are land properties, while the second largest group is of residential property – 47% of all registered real properties. While the number of building properties (3%) and accelerated privatized housing (1%) in the total amount of real estate is relatively small. (Valsts zemes dienests, 2013). On January 1, 2013 as an individual property was registered 62.4% of all land properties, the second largest landowner group was public state institutions – 18.3%, and the third - a legal person, which owned 17.1% of all the land properties. The smallest group of landowners was municipality, which makes only 1.8%. (Valsts zemes dienests, 2013).

Land as a real property is used according to the purpose of use of real property, which is defined by the local government and in accordance with the plan of land use, local area plan or in

order to set current use of property in need of cadastral valuation (Nekustamo īpašumu lietošanas ..., 2006). All purposes of use of real property are divided into two classes:

1) the land on which the building is not the primary objective of land use - building permitted in cases where it is necessary to use land for right purposes. This includes land for agriculture, forestry, water subjects, mineral, natural substrate and land of recreational importance.

2) building land, which includes land of individual and apartment buildings, objects of commercial, public interest, production and transport infrastructure, as well as land of engineering supply network and construction.

For 41% of the total land parcels of land properties registered in the Cadastral Information System (999 thousand) the purpose of use of real property is building land, including land of individual residential buildings 25% (State Land Service, 2013b). As the dwelling can be used only as part of real property to which at least one purpose of use of real property is building land and a building is erected, i.e. - can build residential houses or residential parts of the buildings especially for this purpose (Fig. 3).

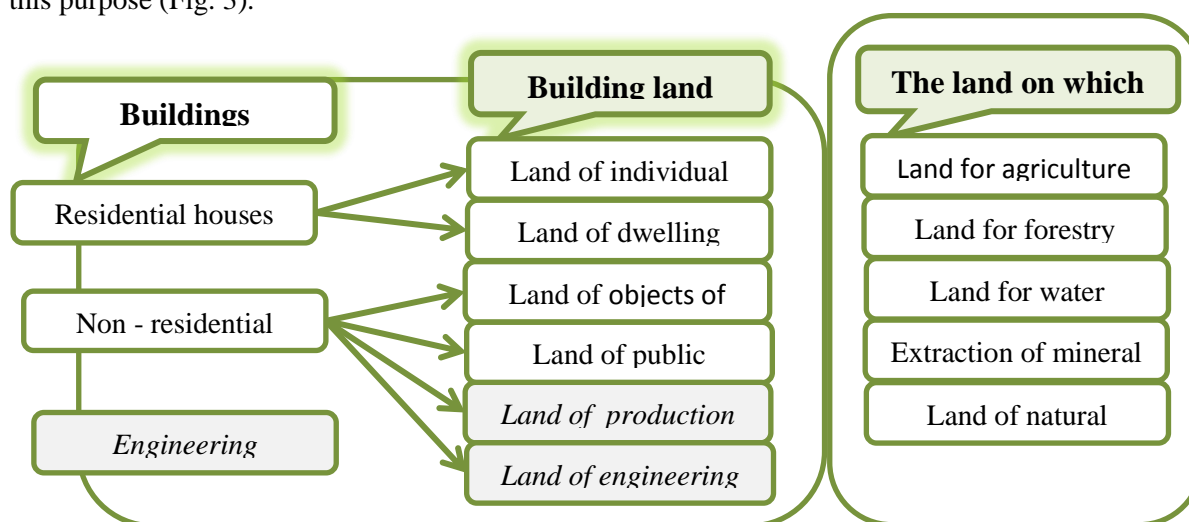


Fig.3. Breakdown of real properties according to purpose of use of real property.

Real property may contain one or more land parcels and buildings included into it, if they belong to the same person who owns the land. With every property, regardless of its content, joint ownership can be formed determining undivided share to each joint owner (Nekustamā īpašuma valsts ..., 2005). After the restoration of the property rights, the owners of denationalized apartment houses alienated undivided shares of property from tenants according to exact area of residential group of premises (apartments) against the sum of area of all residential buildings. In the same way living rooms in communal apartments were alienated where in one residential group of premises lived several households with a joint kitchen, toilet, bathroom, etc. Therefore in residential houses that had been divided in this way there occurred problems due to the large number of co – owners, who could even exceed a hundred. Even more, determining the undivided share for each co – owner, the sum of these shares did not form one whole unit. Problems arose in the coordination between all co – owners in matters of management, conversion, renovation, etc. To avoid these problems, the legislation provided an opportunity for co – owners to divide the dwelling house into apartment properties (Paršova, 2008). Apartment property consisted of a separate property – a residential group of premises with the corresponding undivided share of the building, in which the apartment is located, and of land parcels, on which the house was built if it does not belong to another person (Paršova, 2008; Sideļska; Paršova, Sideļska, Jankava, 2012).

For permanent residence it is possible to use buildings – separated buildings for long-term use with a roof on, which people can enter and which are designed or used for human shelter (Paršova, 2008) or a residential group of premises in this kind of buildings. Buildings are divided into two types: a residential house and non-residential buildings (Noteikumi par būvju..., 2009). Both of these types of buildings can be used as residential, if they have residential groups of premises. If at least half of the building is used for residential purposes, it can be considered a residential house. Other buildings are considered to be non-residential buildings, although some, less than half of them, are in fact used for living (Paršova, 2008).

According to the author's proposed definition a dwelling is a complex of spaces designed for permanent year-round living – one or more living rooms with auxiliaries in a residential building or a non-residential building with one or more apartments. The land required for maintenance of the building is the land on which the building is built (Fig. 4).

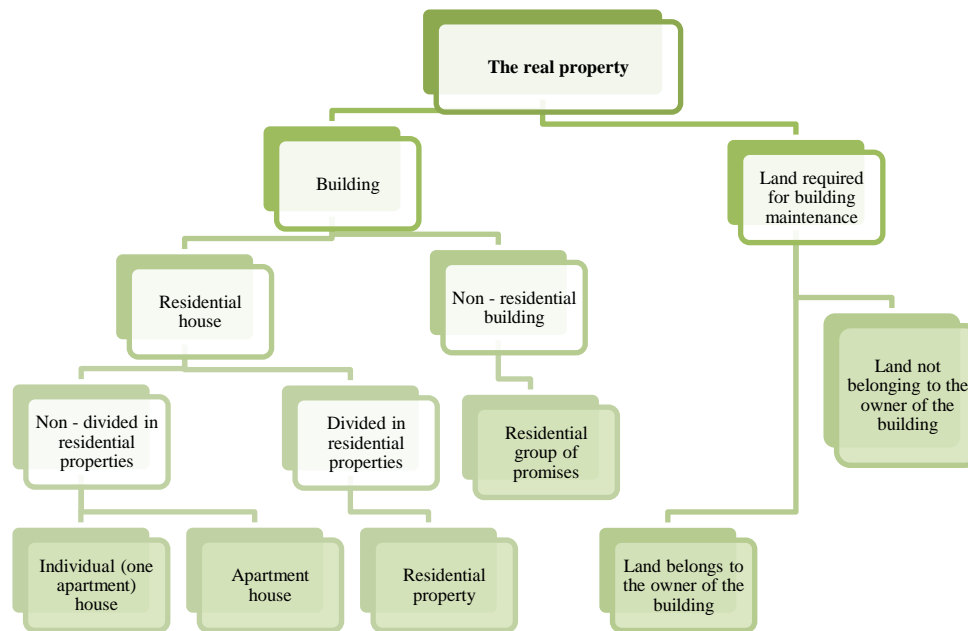


Fig.4. Dwellings types and composition.

If the residential house is part of the land property, the dwelling can be considered a united property within the meaning of Civil Law, and the use and level of amenities stays in the terms of real property (dwelling) owner. If the residential house includes into the building property, but the land is owned by another person, which means that both properties are divided, owners have restrictions on rights of use which are addressed in land lease agreement (Paršova, 2008). Therefore dwellings (Fig. 4) can be divided by land ownership – dwellings which belong to the owner of the building (land property) or not belonging to the land owner (building property). Dwelling may be divided also by main use of building: residential house or non-residential building. Single apartment house, located on a land owned by the apartment owner gives full rights over it. While the apartment house, which hasn't been divided into separated residential properties, is joint property and so its maintenance and disposal must be preceded in accordance with legislation. Another type of dwellings is apartments in non-residential buildings and apartment properties in residential houses. Residential houses by its owner's proposal can be divided into several apartment properties (Dzīvokļu īpašuma likums, 2010). An apartment property contains a separate property, an undivided share of the building in which it is located, and an undivided share of the land on which the building is built if it is not another person's property (Paršova, 2008). Apartment property owners at the same time have two ownerships: individual residential property (apartment) and joint property (building and land or an undivided share of building). Coexistence of two separate ownerships at the same time in some cases carries out a problem implementing a reconstruction or renovation projects of the building (Sidelska, 2012). Unlike residential buildings legislation does not provide rules for non-residential building division into residential properties. This means that non-residential buildings – i.e. buildings, in which less than half of the building is used for residential purposes, can be divided into undivided shares just like joint property. Choosing a dwelling in a non-residential building, the purpose of use of the building also should be taken into consideration – commercial, manufacturing, and so on, which can significantly affect the quality of life, such as a shop, cafe, office, etc.

Conclusions

1. A building included into a land property gives an opportunity to its owner to fully use advantages of unity of the land and building by improving and developing their property as an investment and to obtain all possible benefits from it.

2. Formation of uniformed land properties is being hindered by non-compliance of legislation and lack of public interest.

3. Problems appear in coordination among all co – owners in matters of management, conversion or renovation of jointly owned buildings.

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Summary

В данной статье анализируется развитие недвижимости в Латвии, его правовые и экономические основы, форма и содержание недвижимости. На основе данных Кадастровой информационной системы, оценена структура собственности и распределения собственности, а также цели использования недвижимости. Исследование оценивает взаимосвязь между составом недвижимости и типа жилья. В статье делается вывод, что существующие законы и правовые разногласия отношений между домохозяйствами, которые хотят, чтобы их требования надлежащего жилья и собственности на недвижимое имущество, в котором находится жилище, затрудняет эффективного использования жилья и долгосрочного развития недвижимости. В целях решения вопросов, связанных с развитием жилья, необходимо разработать законодательство, которое гарантировало бы домохозяйствам получить жилье, а также собственникам развивать имущество для получения прибыли.

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For nine years (1999-2008) Anita Sidelska has worked in different structural units of the State Land Service, which is the relevant institution of land management in Latvia. She has been involved in the elaboration of legislative acts, has worked in many working groups and international projects. Anita Sidelska has a high competence in cadastre issues.