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CONDOMINIUMS IN THE HOUSING POLICY OF THE RUSSIAN FEDERATION

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1. Russia's transition to new economic and social relations took place in the early 1990s. Adoption of the Constitution of the Russian Federation and federal laws on property and on privatization of the State-owned and municipal housing stock have significantly transformed the legal system of the Soviet Union, which was based on a centrally planned economy and limited freedom of action for participants in property relations. The adoption of new laws has opened up new possibilities for regulating relations between citizens and legal entities in the housing sector on the basis of widely accepted universal principles of private law: individual autonomy and recognition and protection of private property.

2. Private legal relations have developed against the background of a crisis in the housing sector, caused to a large extent by objective conditions which accompanied the transition from a strict State system of administration to a market economy, and the Government's renunciation of its monopolistic role as investor, contractor and owner in the housing sector. Under the new economic conditions and price dynamics, with a tight fiscal policy, the Government was unable to maintain its housing stock owing to a reduction in real payments by the population and an increase in the federal budget deficit. The problematic situation in the housing sector was exacerbated by inadequate development of market institutions. The Constitution of the Russian Federation still contains rules from the former legislation on a planned, command economy, and this destabilizes the country's system of housing law.

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3. The potential of the housing sector was underrated during the country's general economic restructuring, and a significant part of Russia's renewable wealth (real estate) was practically excluded from reforms. Meanwhile, the housing problem and the problem of maintenance and preservation of the housing stock remain most pressing. However, certain changes are currently taking place in the housing sector. Approaches to national housing policy are being reviewed, and a number of targeted State programmes have been adopted.

4. The housing sector remains the most important component of Russia's economy, and the housing reform is vitally important as it is designed to involve homeowners in the management of their real estate, to reduce inflation, to cut the federal budget deficit, to stabilize monetary circulation through increased accumulation of private resources and the expansion of private housing, to improve the level of housing stock maintenance, and to introduce resource-saving technologies.

5. At the current stage, one of the main objectives of federal housing policy is to increase the share of housing under private ownership of citizens and legal entities through privatization of the existing State-owned and municipal housing stock and promotion of private commercial housing construction. For this purpose, central and local government are taking steps to support the initiatives of citizens who own privatized flats to set up homeowners' associations and other forms of common property management in a condominium involving the right to participate in the management and development of the housing stock, to monitor housing maintenance and repair expenses, and to choose management enterprises.

6. Federal laws and other federal regulations on privatization of housing and the establishment of condominiums incorporate general principles allowing local authorities to introduce regulations in keeping with specific local conditions. This means that the issue can be viewed at two levels - federal (national) and municipal. Legal and financial management issues (legislation, subsidies, taxation, etc.) and issues relating to the State technical inventory of the housing stock fall within the jurisdiction of national authorities. Responsibility for the actual establishment, development and administration of condominiums and the elaboration of management strategies is assigned to municipal authorities.

7. Housing stock in the Russian Federation was traditionally classified on the basis of forms of ownership. Before 1990, apartment buildings and the residential units they contained were under State, public, individual (private) or collective-farm/cooperative ownership. It should be noted that all types of housing belonged to a single entity and were indivisible: apartment buildings were entirely under State, public, private or collective-farm/cooperative ownership. The property was directly managed by the owner.

8. With the adoption of laws on property and on privatization of the State-owned and municipal housing stock, private individuals and legal entities, the Russian Federation, constituent entities of the Russian Federation and municipalities became owners of residential and non-residential units in apartment buildings. They became owners not only of residential and non-residential units in apartment buildings, but also partial owners of the remaining property in the house (common, shared property). Situations arose where private owners and tenants of flats were living side by side in the same buildings. Even odder was the situation

when the residents owned all the apartments in the building but not the building itself. Thus, privatization of housing in practice dictated the need for a transition to a new system of housing management. The new situation had significantly changed property management principles. It was no longer possible to manage property on the basis of the old legislation, as it had practically no mechanisms for State regulation of private property, while new types of management were only in the development stage.

National structure of condominiums

9. Having established an institutional basis for private ownership in the housing sector, the Government was faced with the fact that private ownership of housing dominated the real estate market (as of 1 January 2000, 63% of the housing stock in the Russian Federation was under private ownership). Regulations to govern the new types of legal relations in apartment buildings, which had been transformed de facto into condominiums, as well as issues of shared property management, were urgently needed.

10. In 1993 a set of "Temporary Regulations on Condominiums" were introduced by Presidential decree with a view to ensuring efficient use of real estate in the housing sector during the stage-by-stage constitutional reform in the Russian Federation. The Regulations defined a "condominium" as an association of homeowners in a single real estate complex in the housing sector, within the boundaries of which each homeowner has residential and/or non-residential units in apartment buildings and other real estate linked directly to the building, under private, State, municipal or other form of ownership. Homeowners in a condominium made up a homeowners' association, which ensured agreement among the homeowners on ways to exercise their ownership, use and management rights with regard to common property. Homeowners had to exercise their rights to manage their common property through the association. The concept of common shared property included stairwells between apartments, stairs, lifts, lift shafts and other shafts, corridors, roofs, floors reserved for services and basements, other places of common use, as well as land plots within the established boundaries with elements of technical infrastructure and services and equipment.

11. At that stage, condominiums were not being established on a wide scale. The "Temporary Regulations on Condominiums" proved to be inadequate and economically unjustified and failed to offer real economic incentives to encourage owners of units in apartment buildings to become involved in the management of their real estate. The Regulations were not compatible with the current legislation and were of a purely declarative nature. There was no machinery in place for their implementation. Homeowners could not get used to the idea of regarding housing as property. In 1996, following the adoption of the Federal Homeowners' Associations Act the Presidential decree approving the Temporary Regulations on Condominiums ceased to be effective.

12. The Federal Homeowners' Associations Act, which is currently in force, is designed to:

- Normalize property relations in condominiums;
- Introduce a procedure for the formation, extension, forfeiture and transfer of rights to real estate in condominiums and its management;
- Introduce requirements for State registration of real estate which is the object of property relations in a condominium;
- Introduce a procedure for managing real estate in condominiums and for establishing, registering, operating and liquidating homeowners' associations, as one of the instruments of real estate administration.

13. Under the Act, owners of units in a condominium are liable both for the premises under their individual ownership and for the property under shared ownership. Owners of shared property must decide how to manage it. Thus, the new law transferred expenses associated with the maintenance of real estate to all other homeowners in a condominium.

14. Following the adoption of the new Outline of Reform of the Housing and Communal Sector (Presidential decree No. 425 of 28 April 1997), forming homeowners' associations came to be regarded as one of the most acceptable methods of protecting homeowners' rights in the housing sector. According to the Outline, a homeowners' association:

- Can influence the cost and quality of housing and communal services offered;
- Has a real opportunity to independently resolve matters relating to organization of the servicing and management of housing, and therefore to establish a procedure for the disbursement of funds allocated for this purpose;
- Has an opportunity to implement resource-saving activities, making it possible to significantly reduce overall resource consumption by preventing unnecessary use of water, gas and other energy resources;
- Can educate the general public to be economical with regard to housing and communal services, since they become able to monitor the correlation between the cost and consumption of services - which is almost impossible in municipal housing - especially in individual privatized apartments.

15. The main objectives of the Federal Homeowners' Associations Act and the Outline of Reform of the Housing and Communal Sector with regard to the establishment of condominiums and homeowners' associations are as follows:

- To draw up a State inventory of real estate containing a number of units;
- To ensure rational use of land resources;
- To ensure proper use, maintenance and repair of common property in apartment buildings;
- To safeguard common property in apartment buildings;
- To demonopolize the housing and communal services market and promote competition;
- To promote contractual arrangements in the housing and communal services sector;
- To separate management and servicing functions;
- To involve non-governmental organizations in the servicing of private, State-owned and municipal housing;
- To establish a single property management system for apartment buildings;
- To develop self-regulation in the housing sector - to involve all homeowners in the management and maintenance of apartment buildings;
- To provide homeowners with housing and communal services;
- To ensure that condominium maintenance and operation costs borne by homeowners are minimized;
- To monitor the quality and volume of housing and communal services;
- To ensure resource conservation;
- To obtain additional financial resources from entrepreneurial activities.

16. Under the new legislation, a condominium is defined as a single real estate complex, including a plot of land as well as the buildings and structures located on it, separate parts (units) of which are homeowners' private property while other parts are under their common shared ownership. Accordingly, homeowners' associations have come to be regarded as groups of homeowners set up for the purpose of managing real estate. A condominium can be composed of several residential buildings which have common property (an integrated system of communications, a plot of land, etc.).

17. Condominiums can be managed as follows:

- By homeowners themselves, provided that the building is not large, with a limited number of homeowners (if the building has no more than three or four parts which belong to different homeowners);

- Through the transfer of building-management functions by homeowners to an agency authorized by the Government or a local authority to provide housing and communal services;

- By establishing a homeowners' association which will manage the building itself or conclude a contract to transfer some or all management functions to an authorized individual entrepreneur or authorized organization of any form of ownership (a manager);

- In any other way provided for in federal laws and laws of constituent entities of the Russian Federation.

18. Federal legislation provides for the following types of social protection for homeowners, tenants and leaseholders or residential units in a condominium:

- Transfer of State and municipal subsidies to homeowners' associations to help finance the costs of housing maintenance, routine and major repairs, various types of communal services and compensation for reduced rates payable by certain categories of citizens for housing and communal services;

- Subsidies to certain categories of homeowners, tenants and leaseholders, for housing and communal services;

- Grants for the construction and acquisition of residential units in a condominium to citizens who need to improve their housing situation.

Municipal structure of condominiums in operation

19. Participants in these legal relations displayed a variety of reactions to the programme on the establishment of condominiums and involvement of homeowners in their management, which had an adverse effect on its further implementation. The interests of local authorities and those of the general public diverged. Heads of local administration failed to respond in an adequate way to the interests of the general public, and the general public, in turn, was passive with regard to the new reforms.

20. When the programme was being implemented, heads of local administration professed readiness to support new reforms, but refused to transfer some of their powers to homeowners' associations. In particular, local authorities refused to do the following:

- To register the ownership of standard-size plots of land or the use of outsize plots, since the leasing of municipal plots is a source of income for local authorities;

- To register non-residential areas which are common property under homeowners' ownership;

- To agree to homeowners' associations' right of pre-emption with regard to non-residential commercial units in condominiums;

- To support the establishment of condominiums financially;

- To transfer State and municipal subsidies for maintenance and routine and major repairs to homeowners' associations;

- To provide economic incentives for the establishment of condominiums and homeowners' associations.

21. Furthermore, local authorities introduce complicated bureaucratic procedures for the registration of condominiums and homeowners' associations. At the same time, authorities welcome the establishment of homeowners' associations as this makes it possible to do the following:

- To increase collection of payments for housing and communal services and to collect taxes for land use in a centralized manner;

- To reduce expenses associated with housing stock management, as homeowners alone are responsible for financing the management operation;

- To obtain additional financial resources earmarked for the maintenance and operation of condominiums from homeowners' private funds;

- To obtain additional financial resources from charges for the registration of legal entities (homeowners' associations), the registration of condominiums (excluding land rights and common property rights), the drawing up of an inventory, and the licensing of real estate management;

- To enable resource conservation and modernization of equipment at the expense of homeowners;

- To impose requirements on homeowners' associations with regard to the preservation of the housing stock;

- To reduce the number of participants involved in legal relations dealing with housing.

22. For its part, the general public is unhappy about the one-sided nature of self-regulation in the housing sector, i.e. the fact that obligations are imposed without any rights being granted. As a result, the balance between the interests of the State and those of the population is undermined. It is worth noting that homeowners were given responsibility for maintaining shared property without the country's economic instability being taken into account and in the absence of real support from the Government.

23. The new programme on the establishment of condominiums and homeowners' associations has been implemented successfully only in large cities. Non-governmental organizations and homeowners' associations initiated this process. The most tangible results with respect to the establishment of condominiums were achieved in regions offering economic incentives for their establishment, where local authorities assisted with implementation. A significant number of homeowners' associations were established as a result of the implementation of international programmes on the creation of homeowners' associations.

24. In many cities homeowners' associations have not been established, and the existing homeowners' associations were mostly those created in new housing on the basis of former housing cooperatives and housing construction cooperatives. This process occurred to a lesser extent through the establishment of homeowners' associations in buildings forming part of the State-owned and municipal housing stock. In eight years of their existence, programmes on the establishment of condominiums and homeowners' associations have resulted in the creation of no more than 4,500 associations in Russia.

25. In some regions, owing to the passive attitude of the population with regard to the creation of homeowners' associations, local authorities took on these functions. Municipal programmes on the establishment of condominiums and homeowners' associations can be described in terms of the following stages:

- Creating a municipal regulatory and legal basis for the establishment of condominiums and homeowners' associations;

- Organizing buildings into land property complexes (condominiums) - defining the standard size of land plots, listing common property and shares in it;

- Drawing up a State technical inventory of condominiums;

- Preparing technical and economic dossiers to underpin the establishment of homeowners' associations;

- Publicizing successful homeowners' associations and the advantages of self-management;

- Helping owners to organize homeowners' associations;

- Providing centralized training for leaders of associations;

- Providing homeowners with economic incentives to set up condominiums and associations.

Homeowners' associations

26. Associations of homeowners as a form of property management are set up to oversee the maintenance of apartment buildings and the use of the apartments and common property therein. Homeowners have complete freedom to choose how they wish to manage the property. The desired form of management is chosen at a general meeting.

27. Two forms of homeowners' associations are provided for in the Russian Federation:

- Associations not incorporated as legal entities (suitable for small buildings with a limited number of owner-occupiers);

- Associations incorporated as legal entities.

28. At the present time there exists various forms of homeowners' associations, including: partnerships of homeowners, housing cooperatives and housing construction cooperatives, youth housing complexes, and district communities that are eligible either to manage their buildings independently or to contract some or all of their management functions to an authorized individual entrepreneur or organization. Associations that have transferred all management functions retain oversight functions only.

29. Current legislation does provide for other forms of management; for example when homeowners decide at their general meeting not to set up a homeowners' association but to select a commercial organization to manage their property. This form of management has not caught on because commercial organizations are not eligible for tax exemptions or preferential tariffs for housing and communal services. The housing maintenance costs of homeowners who have chosen a commercial organization to manage their property are far higher than those of other homeowners. These considerations inhibit the wider adoption of this form of management.

30. Homeowners' associations incorporated as legal entities are normally set up as non-commercial, non-State organizations. They are eligible for tax exemptions and preferential tariffs for housing and communal services. Homeowners' associations are eligible to engage in business activities only insofar as this serves the purposes for which they were set up and is consistent with these purposes. The organizational structure of this type of legal entity comprises: a general meeting of members of the organization, an executive body (board of management) and an auditing commission or auditor. The general meeting of the members of the organization is the highest management body. The interests of the legal entity are represented by the chairman of the board who is elected either at a general or at a board meeting.

31. Associations of homeowners have the following statutory rights:

- To conclude contracts to manage and/or service and maintain common property, including areas owned by the association, with any private individual or organization under any form of ownership;

- To organize their own housing administration for the maintenance of real estate held in condominium, exercising the rights of a housing and communal service enterprise and operating a partnership account;

- To draw up the association's annual budget, including making necessary provision for running maintenance and repairs to common property, major repairs and refurbishment, special contributions to the reserve fund, and expenses for other purposes as specified by the charter of the association;

- On the basis of the approved annual budget, to determine the charges and contributions payable by each homeowner in proportion to his or her share in the property;

- To carry out works and provide services to members of the association;

- To take out bank loans in accordance with legally prescribed procedures and conditions;

- To own units in a condominium;

- To transfer on a contractual basis material and monetary resources to persons performing work for or providing services to the association;

- To sell and transfer equipment, inventory and other material assets to commercial and non-commercial organizations and individuals; to exchange, hire out or lease such assets; and to write them off the association's balance sheet in the event of deterioration or obsolescence.

32. Membership of associations is voluntary. The refusal of some homeowners to join an association does not discharge them from paying their share of the necessary expenses connected with the management and maintenance of the condominium.

33. The principal functions entrusted to associations of homeowners are:

- Ensuring the proper use of the area adjacent to the building;

- Ensuring the proper use, maintenance and repair of the common property of the building;

- Ensuring the safety and habitability of the common property of the building;

- Provision of housing and communal services to homeowners;
- Minimization of costs connected with the maintenance and operation of a condominium;
- Control of the quality and quantity of housing and communal services provided;
- Resource conservation;
- Ensuring that all association members assume their responsibilities for the maintenance and repair of real estate held in condominium;
- Collection of mandatory charges;
- Ensuring that the interests of all association members are taken into account when establishing conditions and procedures for the ownership, use and disposal of common property, and sharing the cost of maintaining and repairing the common property in the condominium among the homeowners;
- Stopping actions by third parties that impede or hinder the realization of homeowners' rights to own, use and dispose of common property;
- Representing the interests of association members in their housing, property and other relations with third parties.

34. Homeowners' associations, housing cooperatives and housing construction cooperatives are eligible to set up associations (unions) of legal entities. Associations (unions) of legal entities are established for the following purposes:

- To represent the interests of association members in executive, legislative and judicial bodies;
- To offer guidance, information and legal advice to association members;
- To work out a common position on issues relating to the activity of homeowners' associations;
- To draft bills and regulations;
- To arrange for training in the principles of finance and economics for managers of homeowners' associations.

Principal problems preventing condominiums from taking root and operating smoothly in the Russian Federation.

35. A condominium, as a single real estate complex, is an object of immovable property and hence must be officially registered with the Ministry of Justice; at the present time, however, no such mechanism for official registration exists. The justice authorities are not entitled to officially register immovable property; they register only property rights. Since a homeowners' association is not a commercial organization, but a form of association of homeowners for the joint management and maintenance of a real estate complex (condominium), and so long as condominiums cannot be constituted or registered, homeowners' associations are not being established in many constituent entities of the Russian Federation.

36. Although new legislation has introduced concepts such as condominium management, management organizations, managers and licensing of real estate management, no list of management functions is to be found in Russian laws and regulations, which breeds conflict between participants in legal relations in the sphere of housing.

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37. Against the backdrop of current price movements and a high fiscal policy, the State is no longer in a position to maintain and manage the housing stock. The transfer of all property management functions to homeowners without any real financial support from the State, at a time when the population's income is in decline, has created a situation in which the nascent associations of owners are foredoomed to insolvency or bankruptcy because they find themselves in an even worse position than the State enterprises which used to manage the housing stock.

38. There is no official registration of common property or shareholdings in the right to common property in a condominium. Accordingly:

- Shareholders in the common property in a condominium are deprived of the opportunity to dispose of it, i.e. to transfer or rent a part of the common property to interested homeowners by common consent of the homeowners;

- Homeowners are not eligible to derive profit from the use of common property. They must bear only the costs of maintaining shared property;

- In the absence of appropriate legislation, inspection bodies hold homeowner associations administratively liable for the disposal of immovable property;

- Local authorities unlawfully dispose of homeowners' common property, thereby making it impossible for an association to manage the condominium;

- The local authorities consider that, because there is no officially registered right to common property, the establishment of condominiums and homeowners' associations is unlawful;

- Correspondingly, homeowners consider that, because there is no officially registered right to common property, they are under no obligation to bear the cost of maintaining it;

- At the point when management of real estate is transferred to a homeowners' association, a significant portion of the common property (entrance halls, entrances, basements, verandas, etc.) may turn out to have been sold either by the party that commissioned the building or by the local authorities, and in such cases maintenance companies refuse to service the property.

39. One of the most intractable issues is the specification of the size and the demarcation of the boundaries of plots of land in condominiums, which is a vitally important consideration for the viability of homeowners' associations. First of all, a well-appointed adjacent area with nicely maintained pavements and thoroughfares, children's playgrounds and sports grounds, trees and shrubs, sundry street furniture and other public areas enhances the quality of life and the amenities at the residence. Secondly, a condominium-owned plot of land can be made an important source of extra revenue, for example by constructing user-fee parking facilities, letting space for temporary garages and commercial kiosks, leasing tennis courts, setting aside areas for advertisement hoardings, etc.

40. A standard-size plot of land in an existing built-up area where a condominium is located cannot be transferred to the common shared property of homeowners. Consequently:

- Homeowners refuse to bear the costs associated with the taxation or leasing of land because the plot has not been transferred to their common shared property, i.e. they are not participants in land relations;

- The tax authorities oblige homeowners' associations to pay land tax even though they do not own the property;

- Because there are no land relations, local authorities oblige homeowners' associations to pay the cost of keeping the area around the building tidy;

- Homeowners' associations conclude land leases in the name of a legal entity whereas the homeowners themselves are under no obligation to bear the cost of leasing land, current legislation prohibiting compulsion to conclude a contract. Homeowners refuse to bear the costs associated with the land;

- Shareholders in a plot of land are eligible for land tax exemptions, but these are not always taken into consideration at the signing of a lease.

41. Outsize plots of land in an existing built-up area where a condominium is located cannot be transferred to homeowners' associations. Consequently:

- Homeowners' associations pay the same rents as commercial organizations for outsize areas allocated to them;

- Even when an outsize area has been leased to a homeowners' association, local authorities impose so many restrictions on its use that it becomes unreasonable for the association to lease it;

- The owners of the non-residential areas in a condominium (legal entities) make leasing arrangements for an entire plot of land adjacent to the building, whereupon they designate areas for parking, storage, etc. Consequently, children's playgrounds, sports grounds, clothes-drying areas and dog-walking zones disappear. The concept of an area adjacent to the apartment building is lost.

42. Local authorities deny homeowners' associations the pre-emptive right to purchase or lease non-residential areas forming part of the condominium. Consequently:

- The owners (commercial organizations) of the non-residential parts of an apartment building ignore the interests of residents when going about their business. They convert the built-in or attached non-residential parts of the apartment building into entertainment facilities, 24-hour-shops and manufacturing concerns, thereby infringing the rights and interests of the residents;

- Very often the interests of the owners of the non-residential parts of the building conflict with those of the homeowners and they refuse to pay their share of maintenance;

- Local authorities which own residential and non-residential parts of a building refuse to bear the maintenance costs of the shared property or to take part in managing it.

43. The establishment of homeowners' associations puts homeowners at a disadvantage:

- The cost of maintaining, repairing and managing the condominium increases. Homeowners are obliged to pay these costs in full, whereas homeowners who have not set up an association pay only the rates and tariffs set by the local authorities;

- They are not granted concessionary rates for housing communal services (thus breaching current legislation);

- Homeowners must pay an additional charge, namely the association's budget estimate (financial plan) which includes the following elements: administrative staff expenses, payroll tax, land tax or rent, bank commission for acceptance of mandatory payments by homeowners, organizational costs, major repairs, licensing fees, purchase of bookkeeping supplies, photocopiers and computers, etc.;

- Subsidies for indigent homeowners are allocated according to the rates and tariffs established by the local authorities and do not take account of any additional costs payable by homeowners;

- One-off payments: replacement of inoperative lift equipment, overspending on resources subject to quotas, measures to ensure the security of the premises, legal costs, fines, etc.;

- No communal services are provided to associations which have fallen behind with payments to their suppliers;

- Housing maintenance costs increase when a majority of the owners of the non-residential parts of the building vote to increase expenditure;

- Membership of an association means that homeowners must pay not only their own share in the right to common property but also that of other, insolvent homeowners;

- Prior to the establishment of a homeowners' association, each homeowner was personally responsible for mandatory payments; having formed an association, each homeowner relies on the others to meet their obligations.

44. The main problems connected with condominium management and the activities of homeowners' associations are as follows:

- Association boards devote more time to fending off the attentions of the tax authorities and inspection bodies, litigation, defending their rights and sorting out problems with the local authorities, maintenance organizations and suppliers, lessees of municipal property and their own homeowners, than on condominium management issues;

- Agencies authorized by the Government or local authorities to provide housing and communal services refuse to service buildings where homeowners' associations have been set up;

- As soon as associations begin to ask such agencies to maintain their condominiums to a decent standard, the agencies terminate the maintenance contracts. At the present time associations are unable to control the quantity and quality of work performed or to exert pressure on maintenance enterprises because for all practical purposes there is no competition between them;

- There is no official list of works that make up the concept of "technical services" for condominiums, nor is there a price schedule for such services;

- Local authorities force associations to conclude contracts only with enterprises that are authorized by them and on their terms, on pain of discontinuation of targeted funding from the municipal budget;

- The responsibility for establishing and registering a condominium and a plot of land devolves upon associations, yet no financial support from the municipal budget is provided for these purposes;

- Buildings which are transferred to the management of associations are in poor condition and subsequently require substantial financial contributions from homeowners, since no financial support from the municipal budget is provided for this purpose;

- Associations are administratively liable for breaches of housing maintenance rules and standards, despite the fact that the housing stock was in an unsatisfactory condition when it passed under their management;

- The constituent entities of the Russian Federation have adopted secondary legislation that establishes housing maintenance standards and liability for non-compliance with these standards. Inspection bodies may fine associations for failure to comply with these standards, yet in doing so they overlook the fact that, throughout the period of housing and public utility reform (i.e. the last decade), the public has not borne the full cost of housing and communal services (at best only 70-80%), and associations receive no housing maintenance subsidies;

- Suppliers of communal services treat homeowners' associations as legal entities on a par with industrial enterprises, and therefore apply the Rules for Provision of Services to Legal Entities (payments only in accordance with meter readings; disconnection of heat, electricity and water to the building when payments fall overdue; surcharges for above-quota water consumption, etc.);

- Associations receive no subsidies for the cost of maintenance and running and major repairs to the condominium;

- Allowances for indigent citizens are remitted with considerable delays (up to a year) and in some constituent entities of the Russian Federation they are not calculated for want of funds. Associations therefore get into debt, whereupon various services are routinely disconnected;

- The tax authorities treat associations as commercial organizations for tax assessment purposes;

- The tax authorities make unjustified and unlawful demands on associations. Although associations pay a lower rate of land tax on the floor area in the residential parts of the building, the taxman forces them to pay a higher rate for the common areas. This is because associations are deemed to be resellers of housing and communal services, and membership dues are thus assessed as earned profit;

- Local authorities oblige associations to reflect buildings in their balance sheet, even though the association is not the actual owner of the building. Further, inspection bodies hold associations administratively liable as owners of real estate;

- There are no civil-law relations between the association and homeowners who are not members of it. The law prohibits compulsion to conclude a contract;

- No top-up amounts are paid to associations in respect of homeowners who are eligible for housing and communal allowances. Numerous claims referred to the courts of general jurisdiction or the commercial courts are settled in favour of homeowners who are eligible for allowances, whereas associations are denied compensation on the grounds that current legislation makes no provision for this procedure. Citizens who receive allowances perform all recalculations themselves and make no top-up payments to the association. Shortfalls in the association's revenue are not topped-up and the association gets into debt, whereupon various services are routinely disconnected;

- The activities of associations that decide to take care of their buildings themselves are completely paralysed by taxation, licensing, fines, non-payments by homeowners and budgetary underfinancing;

- Associations are often obliged to pay levies, e.g. for the militia and neighbourhood cleaning;

- Under the law as it currently exists, most associations are not going concerns. Their insolvency becomes apparent as soon as they are set up: non-payment by homeowners, refusal by the owners of the non-residential parts of a building or the owners of residential and non-residential premises (e.g. a municipality) to contribute to common expenses, fines, court decisions, overspending of resources, higher rates for services, budget underfinancing, failure to receive compensation when individual homeowners are granted allowances, etc.;

- When homeowners are not provided with housing and communal services, the association can be sued with all the ensuing legal consequences; and this despite the fact that the sole purpose of the association is to provide the householders with housing and communal services;

- Homeowners refuse to make mandatory payments to the association's current account because the law does not explicitly oblige them to do so;

- Homeowners refuse to pay costs in excess of the rates and tariffs set by the local authorities;

- Many homeowners make mandatory payments only if ordered to do so by a court, because there is no provision for fines for overdue payments at the federal level. The payments set by the courts are considerably lower than the amounts requested by an association;

- Administrations transfer internal and external district communications to the balance sheet of a an association, which results in additional maintenance expenditure for the association;

- Administrations oblige associations to obtain licenses to manage their private housing stock, which is not stipulated in federal law.

Main areas in which the establishment and operation of condominiums can be improved in the Russian Federation

45. Resolutions of numerous conferences and international seminars clearly reflect a generally recognized need to make changes to existing legislation, starting with the Federal Homeowners' Associations Act. The outcome of the international seminar on housing condominiums and housing associations in the framework of housing and municipal service reform (Moscow, 22-24 July 1999), organized by the State Committee of the Russian Federation on Architecture and Construction (Gosstroi) in association with the ECE Committee on Human Settlements, has been used as a basis for elaborating the following proposals to tighten up existing legislation:

- Housing property should be officially registered as a condominium when construction is undertaken by the participants on a shared basis or when another owner joins the partnership;

- A condominium should be registered as a single unit when the inventory is being drawn up;

- Housing property should be officially registered as a condominium by entering information about the property held in common by the homeowners (i.e. their common shared property) and their shareholding in the property in the inventory file;

- The official registration of housing property as a condominium at the final stage of construction should be the responsibility of the commissioning party;

- The official registration of housing property as a condominium in an existing structure should be the responsibility of the local authorities;

- The official registration of property rights over premises in a condominium should be performed after the official registration of housing property or its registration as a condominium;

- Official registration of property rights over premises in a condominium should be performed at the same time as registration of shareholdings in common property;

- The shareholding of each homeowner should be specified proportionally to the share of the common property that has a direct relationship to his or her property;

- Homeowners in a condominium may choose only one management organization;

- Under the law, a management organization should be empowered to represent homeowners in their dealings with suppliers and maintenance and other organizations;

- Homeowners may manage a condominium themselves (if there are no more than 16 units in the condominium owned by at least two different homeowners), or they may delegate management responsibilities;

- A management organization may be any legal entity, irrespective of its organizational structure or legal form, or any entrepreneur who is not an incorporated legal entity.

46. In addition to the aforementioned amendments to the Federal Homeowners' Associations Act, certain new legal rules simplifying and optimizing procedures for the establishment and operation of homeowners' associations and the registration of condominiums have been introduced in the draft Housing Code of the Russian Federation and the special federal housing programme for the period 2002-2010.

47. The adoption of these statutes and programmes in 2001 will remove nearly all the restrictions currently hampering the widespread introduction of the only feasible and effective way to manage housing stock in the Russian Federation, i.e. management by homeowners themselves in their own interests, which is entirely consonant with the interests of the State.
