

ON THE ISSUE OF LEGAL REGULATION OF REALTOR ACTIVITIES IN THE REPUBLIC OF KAZAKHSTAN

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Abstract. *The Department of Analysis of the effectiveness of legislation of the RSE with the REM “Institute of Legislation and Legal Information of the Republic of Kazakhstan” regularly considers issues related to the development of specific proposals in order to improve legislation, which should contribute to the implementation of the legal policy of the Republic of Kazakhstan as a whole.*

Currently, the Republic of Kazakhstan is working on the implementation of the addresses of the First President of the Republic of Kazakhstan - Elbasy N.A. Nazarbayev “Strategy 2050: new political course of an established state” [1] and “The third modernization of Kazakhstan: global competitiveness”, as well as addresses of the President of the Republic of Kazakhstan K-Zh. K. Tokayev “Kazakhstan in a new reality: time for action” dated September 1, 2020 [2]. As part of this work, the Government of the Republic of Kazakhstan is carrying out large-scale work on the development of legislation in various areas of legal regulation.

In order to provide legal support for the work of the Government of the Republic of Kazakhstan, as well as ensure the practical implementation of the instructions of the Head of State, it is necessary to work out the issue of scientific support for legislative activities in the Republic of Kazakhstan. Moreover, the Head of State embedded his intention to involve science in legislation, instructing in his next Address to the people of Kazakhstan “Unity of the people and systemic reforms are a solid foundation for the nation's prosperity” [3] to introduce direct financing of research institutes engaged in fundamental science.

This article is devoted to the analysis of the effectiveness of realtor activities in the Republic of Kazakhstan, as well as the question of the feasibility of introducing independent legal regulation. In particular, we examined the issues of the current legal regulation of real estate activities in the Republic of Kazakhstan. A brief comparative analysis of existing problems in the legal regulation of this activity in relation to regulatory legal acts of higher legal force has been carried out. Conclusions are drawn on the issue of compliance of the introduction of separate legal regulation for realtors with the strategic goals of the Republic of Kazakhstan. The opinions of individual Kazakhstani experts on this issue were used.

Keywords: *realtor, realtor activity, legal monitoring, real estate transactions, licensing of realtors, self-regulation, legal regulation.*

ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ РИЭЛТОРЛЫҚ ҚЫЗМЕТТІ ҚҰҚЫҚТЫҚ РЕТТЕУ ТУРАЛЫ МӘСЕЛЕСІНЕ

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Аннотация. «Қазақстан Республикасының Заңнама және құқықтық ақпарат институты» ШЖҚ РМК Заңнаманың тиімділігін талдау бөлімі заңнаманы жетілдіру мақсатында нақты ұсыныстар әзірлеу жөніндегі мәселелерді тұрақты негізде қарастырады, олар тұтастай алғанда Қазақстан Республикасының құқықтық саясатын іске асыруға ықпал етуі тиіс.

Қазіргі уақытта Қазақстан Республикасында Қазақстан Республикасының Тұңғыш Президенті – Елбасы Н.Ә. Назарбаевтың «Қазақстан-2050» Стратегиясы қалыптасқан мемлекеттің жаңа саяси бағыты» [1] және «Қазақстанның Үшінші жаңғыруы: жаһандық бәсекеге қабілеттілік» Жолдауларын, сондай-ақ Қазақстан Республикасының Президенті Қ-Ж.К. Тоқаевтың «Жаңа жағдайдағы Қазақстан: іс-қимыл кезеңі» 2020 жылғы 1 қыркүйектегі Жолдауын [2] орындау мақсатында жұмыс өткізілуде. Осы жұмыс шеңберінде Қазақстан Республикасының Үкіметі құқықтық реттеудің түрлі салаларында заңнаманы дамыту бойынша ауқымды жұмыс жүргізуде.

Қазақстан Республикасы Үкіметінің жұмысына құқықтық қолдау көрсету, сондай-ақ Мемлекет басшысының тапсырмаларын іс жүзінде іске асыруды қамтамасыз ету мақсатында Қазақстан Республикасында заң жобалау қызметін ғылыми қамтамасыз ету мәселесін пысықтау қажет. Сонымен қатар, Мемлекет басшысы өзінің келесі «Халық бірлігі және жүйелі реформалар – ел өркендеуінің берік негізі» [3] атты Қазақстан халқына Жолдауында іргелі ғылыммен айналысатын ғылыми-зерттеу институттарын тікелей қаржыландыруды енгізуді тапсыра отырып, ғылымды норма шығармашылығына тарту жөніндегі ниетін бекітті.

Бұл мақала Қазақстан Республикасындағы риэлторлық қызметтің тиімділігін талдауға, сондай-ақ дербес құқықтық реттеуді енгізудің орындылығы туралы мәселеге арналған. Атап айтқанда, Қазақстан Республикасындағы риэлторлық қызметті қолданыстағы құқықтық реттеу мәселелері қарастырылды. Осы қызметті құқықтық реттеудегі бар проблемаларға неғұрлым жоғары құқықтық күштің нормативтік құқықтық актілеріне қатысты қысқаша салыстырмалы талдау жүргізілді. Риэлторлар бойынша жекелеген құқықтық реттеуді енгізудің Қазақстан Республикасының стратегиялық мақсаттарына сәйкестігі мәселесі бойынша қорытындылар жасалды. Бұл мәселенің жекелеген қазақстандық сарапшыларының пікірлері пайдаланылды.

Түйін сөздер: риэлтор, риэлторлық қызмет, құқықтық мониторинг, жылжымайтын мүлік мәмілелері, риэлторларды лицензиялау, өзін-өзі реттеу, құқықтық реттеу.

К ВОПРОСУ О ПРАВОВОМ РЕГУЛИРОВАНИИ РИЭЛТОРСКОЙ ДЕЯТЕЛЬНОСТИ В РЕСПУБЛИКЕ КАЗАХСТАН

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Аннотация. Отделом анализа эффективности законодательства РГП на ПХВ «Институт законодательства и правовой информации Республики Казахстан» на регулярной основе рассматриваются вопросы по выработке конкретных предложений в целях совершенствования законодательства, которые должны способствовать реализации правовой политики Республики Казахстан в целом.

В настоящее время в Республике Казахстан проводится работа по реализации посланий Первого Президента Республики Казахстан - Елбасы Н.А. Назарбаева «Стратегии-2050: новый политический курс состоявшегося государства» [1] и «Третья модернизация Казахстана: глобальная конкурентоспособность», а также послания Президента Республики Казахстан К-Ж. К. Токаева «Казахстан в новой реальности: время действий» от 1 сентября 2020 года [2]. В рамках этой работы Правительством Республики Казахстан ведется масштабная работа над развитием законодательства в различных сферах правового регулирования.

В целях оказания правовой поддержки работы Правительства Республики Казахстан, а также обеспечения практической реализации поручений Главы Государства необходимо проработать вопрос научного обеспечения законопроектной деятельности в Республике Казахстан. Более того, Глава Государства закрепил свое намерение по привлечению науки в нормотворчество, поручив в следующем своем Послании народу Казахстана «Единство народа и системные реформы – прочная основа процветания страны» [3] внедрить прямое финансирование научно-исследовательских институтов, занимающихся фундаментальной наукой.

Данная статья посвящена анализу эффективности риэлтерской деятельности в Республике Казахстан, а также вопроса о целесообразности введения самостоятельного правового регулирования. В частности, нами рассмотрены вопросы действующего правового регулирования риэлтерской деятельности в Республике Казахстан. Проведен краткий сравнительный анализ существующих проблем в правовом регулировании этой деятельности в соотношении с нормативными правовыми актами более высокой юридической силы. Сделаны выводы по вопросу соответствия введения отдельного правового регулирования по риелторам стратегическим целям Республики Казахстан. Используются мнения отдельных казахстанских экспертов этого вопроса.

Ключевые слова: риелтор, риэлтерская деятельность, правовой мониторинг, сделки с недвижимостью, лицензирование риелторов, саморегулирование, правовое регулирование.

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Introduction

Nowadays, in the field of real estate services there is a problem of insufficient regulation of subjects of legal relations. Currently, given the growth of the real estate market, there is a need to create clear rights and responsibilities for participants in this area of legal relations.

As K.M. Ilyasova points out, “The social functions of real estate and its value have at all times determined the legislator’s special approach to regulating relations in the field of real estate. Over the years of Kazakhstan’s independence, significant changes have occurred in the legal regime of real estate, due to socioeconomic and other factors.” [4; p. 270].

Several laws apply to the topic of this article. In particular, the Civil Code (General Part) dated December 27, 1994, the Civil Code (Special Part) dated July 1, 1999, the Entrepreneur Code dated October 29, 2015, the Law “On Housing Relations” dated April 16, 1997, the Law “On equity participation in housing construction”

dated April 7, 2016, the Law “On State Registration of Rights to Real Estate” dated July 26, 2007, as well as certain rules stem from the Laws of the Republic of Kazakhstan “On Permissions and Notifications” dated May 16, 2014 No. 202-V, “On standardization” dated October 5, 2018 No. 183-VI, “On Self-Regulation” dated November 12, 2015 No. 390-V. At the same time, in these legislative acts the terms “realtor”, “realtors activity”, as well as words derived from them, are not used.

Notably, clause 2 of Article 6 of the Constitution of the Republic of Kazakhstan provides, among other things, that subjects and objects of property, the scope and limits of the rights of owners, and guarantees of their protection shall be determined by law.

In accordance with Article 14 of the Civil Code of the Republic of Kazakhstan (General Part) dated December 27, 1994, a citizen may own property, including foreign currency, both within the Republic of Kazakhstan and abroad,

unless otherwise established by the Law of the Republic of Kazakhstan “On Combating Corruption”; inherit and bequeath property; freely move around the territory of the republic and choose a place of residence; freely leave the republic and return to its territory; engage in any activity not prohibited by legislative acts; create legal entities independently or with other citizens and legal entities; make any transactions not prohibited by legislative acts and participate in obligations; have the right of intellectual property to inventions, works of science, literature and art, other results of intellectual activity; demand compensation for material and moral damage; have other property and personal non-property rights.

According to the first part of the clause 1 of Article 188 of the Civil Code of the Republic of Kazakhstan (General Part), the ownership shall be a recognized and protected by legislative acts the right of a person at his (her) discretion to own, use and dispose of the property which belongs to him (her).

Article 194 of the Civil Code of the Republic of Kazakhstan (General Part) establishes that the specifics of the exercise of ownership and other property rights to housing are regulated by housing legislation.

In turn, by clause 3 of Article 11 of the Law of the Republic of Kazakhstan “On Housing Relations” dated April 16, 1997 No. 94-I, relations related to the acquisition or implementation of ownership of housing are also regulated by the civil legislation of the Republic of Kazakhstan.

According to sub clause 2) of Article 12 of the Law of the Republic of Kazakhstan “On Housing Relations”, the right of ownership of a dwelling or part of it arises on the basis of transactions of purchase and sale, exchange, donation, alienation with the condition of lifelong maintenance and other civil law transactions that do not contradict the legislation of the Republic of Kazakhstan.

Clause 1 of Article 18 of this Law establishes that the owner of a dwelling, as well as an unfinished residential building, has the right to freely, at his discretion, sell it, determining the terms of sale, give, exchange, bequeath to other persons, pledge, dispose of in another way not prohibited by legislative acts of the Republic of Kazakhstan, taking into account the specifics provided for in this Article.

In the normative resolution of the Constitutional Council of the Republic of Kazakhstan “On checking the constitutionality of sub clause 8) of Article 107 of the Law of the

Republic of Kazakhstan “On Housing Relations” on the proposal of the Alatau District Court of Almaty” dated January 21, 2020 No.1, it is noted that in a market economy, citizens of the Republic of Kazakhstan mostly independently exercise their right to housing (through construction at home, making transactions with an apartment and in other ways), and the state undertakes to create the necessary conditions for this. Citizens of the Republic may have any legally acquired property in private ownership, including by inheritance (clauses 1 and 2 of article 26 of the Constitution). Housing legislation does not limit the number and size of dwellings owned by one citizen or legal entity (clause 2 of Article 11 of the Law on Housing Relations).

The second part of the clause 1 of Article 117 of the Civil Code of the Republic of Kazakhstan (General Part) establishes that apartments and other residential premises, as well as non-residential premises located as part of a condominium property, are recognized as independent objects (types) of real estate if they are in individual (separate) ownership.

Thus, a home owned by a person (persons) in modern conditions is a full-fledged object of civil rights, and all the powers of the owner provided for by law apply to it, including the right of disposal, that is, a legally secured opportunity to determine the legal fate of the property (part four, clause 2, article 188 of the Civil Code of the Republic of Kazakhstan (General part).

At the same time, objects of civil rights can be freely alienated or transferred from one person to another in the order of universal succession (inheritance, reorganization of a legal entity) or in another way, if they are not withdrawn from circulation or limited from circulation (clause 1 of Article 116 of the Civil Code of the Republic of Kazakhstan (General Part).

According to the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan, 12.8 thousand apartments were put into operation in August. Over the month the growth was 19.6%, over the year – 21.7%. The described trend is observed against the backdrop of an increase in housing transactions in apartment buildings. In August, their total number increased by 12.7% (3.2 thousand units) compared to the previous month, to 28.7 thousand units [5].

It is worth noting that the rights and obligations of consumers of real estate services (clients) are regulated by the general rules established by the Civil Code of the Republic of Kazakhstan on the obligations of paid

services, agency, commission and guarantee, as well as contracts concluded between clients and real estate firms.

Methods

The article uses formal logical and dialectical methods, comparative legal, empirical analysis, as well as quantitative, qualitative and special methods of scientific research.

Results and discussion

The current situation these days in the field of real estate services in Kazakhstan comes down to the following.

As follows from the website of the SLEIE “Self-Regulatory Association of Realtors of Kazakhstan”, SARK was created on October 25, 2009 and has been on the market for 13 years 11 months².

Since SARK is a self-regulating organization, its activities are subject to the requirements of the Law of the Republic of Kazakhstan “On Self-Regulation” dated November 12, 2015 No. 390-V, clause 1 of Article 20 of which establishes that a self-regulating organization develops and approves rules and standards that are mandatory for all its members (participants), aimed at ensuring the following objectives:

- 1) definition of requirements for members (participants);
- 2) improving the quality and safety of goods (works, services) produced by its members (participants);
- 3) prevention of actions misleading consumers about the quality of goods (works, services);
- 4) improving the competitiveness of manufactured products;
- 5) the use of methods to ensure property liability;
- 6) protection of the interests of members (participants).

From the announcements published by the organization it follows that it is active, including holding a “round table” on the topic “The work of a real estate agency in a falling market” (July 26, 2023, Almaty), certification of realtors (beginning of 19 September 2023), and other events is carried out.

Thus, the activities of SARK are based on self-regulation, which, in our opinion, is the optimal way to ensure the principle of reasonable government intervention in this area.

At the same time, membership in this kind

of self-regulatory organizations should be voluntary, since in cases where the law establishes mandatory membership, appropriate levers of influence are also provided for, aimed at fulfilling such a requirement and stimulating it.

For example, clause 1 of Article 78 of the Law of the Republic of Kazakhstan “On advocacy and legal assistance” dated July 5, 2018 No. 176-VI establishes that the chamber of legal consultants is recognized as a self-regulatory organization based on compulsory membership, created to regulate the provision of legal assistance and control over the activities of its members in terms of their compliance with the requirements of the legislation of the Republic of Kazakhstan on advocacy and legal assistance, the rules and standards of the chamber of legal consultants, the Code of professional ethics, included in the register of chambers of legal consultants, uniting at least two hundred legal consultants under the terms of membership.

On the other hand, according to clause 1 of Article 58 of the Code of the Republic of Kazakhstan “Civil Procedural Code of the Republic of Kazakhstan” dated October 31, 2015 No. 377-V, the following persons can be representatives on behalf of the court:

- “1) advocates;
- 2) employees of legal entities:
on the affairs of these legal entities, and state bodies - on the affairs of these state bodies and their territorial divisions;
in matters of other legal entities, if such legal entities are under the control (direct or indirect) of the same person;
- 3) authorized representatives of trade unions - in matters of workers, employees, as well as other persons whose rights and interests are protected by these trade unions;
- 4) authorized organizations, which are granted by law, charter or regulation the right to protect the rights and interests of members of these organizations, as well as the rights and interests of other persons;
- 4-1) Commissioner for Human Rights of the Republic of Kazakhstan;
- 5) one of the accomplices on behalf of other accomplices;
- 6) persons who are members of the chamber of legal consultants in accordance with the Law of the Republic of Kazakhstan “On advocacy and legal assistance”.

This provision means that membership in the chamber of legal advisers is a prerequisite

² statsnet.co – сайт по проверке информации о юридических лицах и индивидуальных предпринимателях, зарегистрированных в Республике Казахстан и других стран // <https://statsnet.co/companies/kz/34811833> (дата обращения: 08.12.2023)

for participating in civil proceedings as a representative.

However, in the case of realtors, there is no such leverage, since their activities, which comes down mainly to the provision of consulting and other services, do not involve their direct interaction with government (quasi-government) bodies and organizations.

Based on the foregoing, it is considered advisable in resolving this issue to be guided by Article 22 of the Entrepreneur Code, according to which the state creates conditions for the development of self-regulation in business and professional activities by reducing the scope of state regulation based on the minimum need for it, as well as other incentive measures determined by the legislation of the Republic of Kazakhstan.

On the other hand, opinions are also expressed about the need to adopt a special regulatory legal act in Kazakhstan aimed at regulating these relations. So, for example, I.V. Zalimbaeva notes that, based on the analysis of real estate activities, one can come to the following conclusions: regulation of this area only through civil legislation is not enough. It is necessary to develop a clear, complete regulatory legal act, which will ensure a unified state policy in the field of regulation of real estate activities, protection of the rights and interests of subjects of real estate activities and consumers of real estate services when carrying out transactions with real estate. Taking this into account, it is important to note that the development and adoption of a regulatory legal act will not only protect the consumer of the real estate market, but will also increase the level of reputation of the real estate company [6].

As for the cases of unprofessionalism and dishonesty on the part of individual realtors, as well as distortions in the terms of contracts with customers (consumers) of realtor services in favor of the latter, we note that the presence of fraudulent and other “gray” and even “black” schemes is not something special, not the characteristic only of this type of activity.

As noted in the Russian press on February 12, 2012, a law abolishing licensing of real estate activities came into force. Now anyone can provide intermediary services in the real estate market. According to experts, intermediary services may become 2-3 times cheaper. But at the same time, real estate transactions will become more risky. So now anyone can become a single broker or open a real estate agency. Professional realtors believe that the risks of clients will now increase many

times over, and finding a last resort in the event of a controversial situation will be much more difficult [7].

In this regard, we can only recommend Kazakhstani consumers of realtor services to be both extremely careful and prudent when choosing a specific contractor and when concluding a corresponding agreement with him.

Conclusion

Based on the studied and mentioned above individual issues related to the implementation and protection of the right of citizens to housing, these legislative acts contain:

1. A number of articles of the Civil Code of the Republic of Kazakhstan (General part), as well as the Law of the Republic of Kazakhstan “On Housing relations” are given above.

Needs to be added that since real estate services may include representation relations, in accordance with the first part of clause 1 of Article 163 of the Civil Code of the Republic of Kazakhstan (General Part), a transaction, committed by one person (representative) on behalf of another person (represented) by virtue of the authority based on power of attorney, legislation, a resolution of the court or on an administrative act, shall directly create, alter or terminate the civil rights and obligations of the represented.

At the same time, according to clause 1 of Article 167 of the Civil Code of the Republic of Kazakhstan (General part), a power of attorney is a written authorization by one person (the grantor) for representation on his behalf, which is issued to another person (the trustee).

2. With regard to the Civil Code of the Republic of Kazakhstan (Special Part), it is notable that since real estate services, like real estate activities in general, imply the provision of various types of services, including consulting, as well as the performance of a number of factual and legal actions, contractual relations between the customer and the contractor (realtor) are subject to regulation by Chapter 25 “Purchase and Sale”, Chapter 26 “Barter”, Chapter 29 “Property rent (lease)”, Chapter 30 “Rental Housing”, Chapter 33 “Paid Provision of Services”, Chapter 41 “Assignment”, Chapter 42 “Commission” of the Civil Code of the Republic of Kazakhstan (Special part) dated July 1, 1999.

3. The Entrepreneur Code of the Republic of Kazakhstan in sub clauses 4), 5), 6) of clause 2 of Article 80 established that the tasks of state regulation of entrepreneurship include encouraging fair, ethical business conduct based

on the business reputation of entrepreneurs, promoting the development of self-regulation and protecting consumer rights.

At the same time, the following regulatory instruments are the means of ensuring compliance with the requirements mandatory for business entities:

- 1) the permitting or notification procedure for business entities to carry out certain types of activities or actions (operations);
- 2) state control and supervision;
- 3) establishment by the laws of the Republic of Kazakhstan of the liability of business entities;
- 4) information tools;
- 5) self-regulation based on mandatory membership (participation) in a self-regulatory organization (clause 2 of Article 81 of the Entrepreneur Code of the Republic of Kazakhstan).

Clause 1, first part of clause 4 of Article 82 of the Entrepreneur Code of the Republic of Kazakhstan establishes that if government agencies plan to introduce a new regulatory instrument and (or) requirement to tighten regulation in relation to business entities, government agencies must first conduct a regulatory impact analysis procedure in the following manner: determined by the authorized body for entrepreneurship. Tightening regulation means establishing additional responsibilities or otherwise increasing the burden on business entities.

The introduction of a new regulatory instrument and (or) requirement, tightening of regulation in relation to business entities is carried out only after approval at a meeting of the interdepartmental commission on the regulation of business activities.

4. The Law of the Republic of Kazakhstan “On equity participation in housing construction” regulates public relations related to the activities of shared participation in housing construction of multi-apartment residential buildings by attracting money from individuals and (or) legal entities, and also establishes guarantees for the protection of the rights and legitimate interests of the parties to the agreement on shared participation in housing construction.

From the point of view of the subject of this study, only the provisions of the law related to the emergence of a shareholder’s ownership right to a share in an apartment building are of interest.

5. The following provisions of the Law of the Republic of Kazakhstan “On State Registration of Rights to Real Estate” seem important: real

estate (real estate); state registration of rights to real estate; secondary real estate; title documents; applicant; authorized representative of the applicant; electronic. In addition, the procedure for state registration of rights to real estate, which is determined by Article 20 of the Law.

Here is notable that in accordance with first part of clause 1 of Article 155 of the Civil Code of the Republic of Kazakhstan (General Part), transactions subject to mandatory state or other registration in accordance with legislative acts are considered completed from the moment of registration, unless otherwise provided by legislative acts.

6. In the Law of the Republic of Kazakhstan “On Permissions and Notifications” they are (or may be) related to the subject of this article, one of the basic principles of state regulation should be carefully considered and proven: the validity and effectiveness of the introduction of a permit or notification procedure (sub clause 2) of Art. 4 of the Law). In this case, the requirement to obtain permission or send a notification within the framework of one type of activity or action (operation) may be established depending on the level of danger associated with the upcoming activity or action (operation) of different private business entities (second part of clause 4 of Article 6 of the Law).

7. Moreover, the Law “On Standardization” has been adopted and is in force in the Republic of Kazakhstan, in sub clause 14) of Article 1 of which standardization is defined as an activity aimed at ensuring the safety and quality of standardization objects and achieving the optimal degree of streamlining of requirements for standardization objects by establishing provisions for universal, multiple use in relation to actual and potential problems.

The goals of standardization are, inter alia, improving the safety and quality of products, processes and services; prevention of actions that mislead consumers regarding the safety and quality of products, processes and services; creating conditions for improving the safety and quality of life of the population (sub clauses 4), 6), 8) of Art. 4 of the Law).

According to sub clause 1) of Article 5 of the Law, standardization in the Republic of Kazakhstan is based, inter alia, on the principle of voluntariness: choice for the purpose of applying standardization documents, unless otherwise established by the legislation of the Republic of Kazakhstan; participation in activities in the field of standardization of all interested parties; choosing from interrelated standards.

By Decree of the Government of the Republic of Kazakhstan dated December 25, 2018 No. 885, the national standardization body determined the republican state enterprise with the right of economic management “Kazakhstan Institute of Standardization and Metrology” of the Technical Regulation and Metrology Committee of the Ministry of Trade and Integration of the Republic of Kazakhstan. Thus, this national body approved and put into effect the National standard of the Republic of Kazakhstan “Real estate services in the real estate market. General requirements” (hereinafter referred to as the - state standard)³.

This state standard establishes the requirements for real estate services and the composition, as well as the proper quality of provision of real estate services in transactions with real estate and rights to them. Moreover, it introduces assessment requirements for the quality of services provided and consolidates the concept of real estate services; real estate activity; real estate specialist/realtor, as well as guarantees for realtors and consumers, which are detailed in the state standard.

Since a real estate service is defined as a paid service provided by the contractor to customers when carrying out transactions with real estate objects and rights to them, the legal relationship between the customer and the contractor is subject to regulation by Chapters 33 “Compensated rendering of services”, 41 “Appointment”, 42 “Commission” of the Civil Code of the Republic of Kazakhstan (Special part).

According to clause 1 of Art. 683 of the Civil Code of the Republic of Kazakhstan (Special Part), under a contract for compensated rendering of services, the contractor shall render

services (to perform certain actions or carry out certain activity), while the customer shall pay for these services.

Clause 1 of Article 846 of the Civil Code of the Republic of Kazakhstan (Special Part) stipulates that under an appointment agreement, one party (appointee) undertakes to perform certain legal actions on behalf and at the expense of the other party (appointor).

In accordance with clause 1 of Article 865 of the Civil Code of the Republic of Kazakhstan (Special Part), under a commission agreement, one party (the Commission agent) undertakes, on behalf of the other party (the Committent), to make one or more transactions on its own behalf at the expense of the Committent for a fee.

Moreover, it is considered as possible to apply to such legal relations the Law of the Republic of Kazakhstan “On the Protection of Consumer Rights” dated May 4, 2010 No. 274-IV.

This Law defines the legal, economic and social basis for the protection of consumer rights, as well as measures to provide consumers with safe and high-quality goods (work, services).

According to sub clauses 6), 8) of Art. 1 of the Law, a service is understood as an activity oriented to satisfaction of needs of consumers, the results of which are not expressed materially; a contractor is an individual or legal entity performing work or rendering a service under the contract.

Article 39 of the Law determines that the form and procedure for payment for performed work (rendered service) shall be determined under agreement between a consumer and executor, unless otherwise provided by the Laws of the Republic of Kazakhstan.

REFERENCES

1. «Стратегия «Казахстан-2050»: новый политический курс состоявшегося государства». Послание Президента Республики Казахстан - Лидера нации Н.А. Назарбаева народу Казахстана, г. Астана, 14 декабря 2012 года // <https://adilet.zan.kz/rus/docs/K1200002050> (дата обращения: 03.12.2023)
2. Токаев К-Ж.К. Послание народу Казахстана от 1 сентября 2020 г. «Казахстан в новой реальности: время действий» // https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g (дата обращения: 03.12.2023)
3. Послание Главы государства Касым-Жомарта Токаева народу Казахстана «ЕДИНСТВО НАРОДА И СИСТЕМНЫЕ РЕФОРМЫ – ПРОЧНАЯ ОСНОВА ПРОЦВЕТАНИЯ СТРАНЫ» от 1 сентября 2021 года // <https://www.akorda.kz/ru/poslanie-glavy-gosudarstva>

³ Национальный стандарт Республики Казахстан СТ РК 3702–2020 «Услуги риэлтерские на рынке недвижимости. Общие требования, утвержден Приказом Председателя Комитета технического регулирования и метрологии Министерства торговли и интеграции Республики Казахстан № 453-од от 21 декабря 2020 г. // https://uark.kz/ru/page/nacionalnyy-standart-respubliki-kazahstan_87 (дата обращения: 18.01.2024)

kasym-zhomarta-tokaeva-narodu-kazahstana-183048 (дата обращения: 01.12.2023)

4. Ильясова К.М. Сделки с недвижимостью в Республике Казахстан: некоторые актуальные вопросы / в кн.: Ильясова К.М. Избранные труды в двух томах. Том 1. Правовой режим недвижимого имущества. – Алматы, 2018. – 288 с.

5. «В Казахстане вводят все большие квартир» от 18 сентября 2023 г. // Источник: Телеграмм канал DataHub_FCBK, https://t.me/DataHub_FCBK/1942; Демидов Владимир «Где в Казахстане построили больше всего квартир в августе», от 19 сентября 2023 года // <https://standard.kz/ru/post/gde-v-kazaxstane-postroili-bolse-vsego-kvartir-v-avguste> (дата обращения: 08.01.2024).

6. Залимбаева И.В. Правовое регулирование риэлторской деятельности в Республике Казахстан // режим доступа: <https://rep.ksu.kz/bitstream/handle/data/877/zalimbaeva.pdf?sequence=1&isAllowed=y> (дата обращения: 08.12.2023)

7. «У риэлторов отняли лицензию; Все риэлторы теперь без лицензий», от 02.12.2002г. // Агентство недвижимости «МИЭЛЬ» <https://miel.ru/press/u-rieltorov-otnyali-litsenziyu-vse-rieltory-teper-bez-litsenziy-5256/#:~:text=12%20%D1%84%D0%B5%D0%B2%D1%80%D0%B0%D0%BB%D1%8F%20%D0%B2%D1%81%D1%82%D1%83%D0%BF%D0%B8%D0%BB%20%D0%B2%20%D1%81%D0%B8%D0%BB%D1%83,%D0%BF%D0%BE%D0%B4%D0%B5%D1%88%D0%B5%D0%B2%D0%B5%D1%82%D1%8C%20%D0%B2%20%2D3%20%D1%80%D0%B0%D0%B7%D0%B0> (дата обращения: 08.01.2024)

REFERENCES

1. «Strategiya «Kazakhstan-2050»: novyy politicheskii kurs sostoyavshegosya gosudarstva». Poslaniye Prezidenta Respubliki Kazakhstan - Lidera natsii N.A. Nazarbayeva narodu Kazakhstan, g. Astana, 14 dekabrya 2012 goda // <https://adilet.zan.kz/rus/docs/K1200002050> (date of access: 03.12.2023)

2. ZH.K. Poslaniye narodu Kazakhstana ot 1 sentyabrya 2020 g. «Kazakhstan v novoy realii: vremya deystviy» // https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g (date of access: 03.12.2023)

3. Poslaniye Glavy gosudarstva Kasym-Zhomarta Tokayeva narodu Kazakhstana «YEDINSTVO NARODA I SISTEMNYYE REFORMY – PROCHNAYA OSNOVA PROTSVETANIYA STRANY» ot 1 sentyabrya 2021 goda // <https://www.akorda.kz/ru/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-183048> (date of access: 01.12.2023)

4. Ilyasova K.M. Sdelki s nedvizhimost'yu v Respublike Kazakhstan: nekotoryye aktual'nyye voprosy / v kn.: Ilyasova K.M. Izbrannyye trudy v dvukh tomakh. Tom 1. Pravovoy rezhim nedvizhimogo imushchestva. – Almaty, 2018. – 288 s.

5. «V Kazakhstane vvodyat vse bol'she kvartir» ot 18 sentyabrya 2023 g. // Istochnik: Telegramm kanal DataHub_FCBK, https://t.me/DataHub_FCBK/1942; Demidov Vladimir «Gde v Kazakhstane postroili bol'she vsego kvartir v avguste», ot 19 sentyabrya 2023 goda // <https://standard.kz/ru/post/gde-v-kazaxstane-postroili-bolse-vsego-kvartir-v-avguste> (data obrashcheniya: 08.12.2023)

6. Zalimbayeva I.V. Pravovoye regulirovaniye rieltorskoy deyatel'nosti v Respublike Kazakhstan // rezhim dostupa: <https://rep.ksu.kz/bitstream/handle/data/877/zalimbaeva.pdf?sequence=1&isAllowed=y> (data obrashcheniya: 08.12.2023).

7. «U rieltorov otnyali litsenziyu; Vse rieltory teper' bez litsenziy», ot 02.12.2002g. // Agentstvo nedvizhimosti «MIEL'» <https://miel.ru/press/u-rieltorov-otnyali-litsenziyu-vse-rieltory-teper-bez-litsenziy-5256/#:~:text=12%20%D1%84%D0%B5%D0%B2%D1%80%D0%B0%D0%BB%D1%8F%20%D0%B2%D1%81%D1%82%D1%83%D0%BF%D0%B8%D0%BB%20%D0%B2%20%D1%81%D0%B8%D0%BB%D1%83,%D0%BF%D0%BE%D0%B4%D0%B5%D1%88%D0%B5%D0%B2%D0%B5%D1%82%D1%8C%20%D0%B2%20%2D3%20%D1%80%D0%B0%D0%B7%D0%B0> (data obrashcheniya: 08.01.2024)