

# §§ FREE OF CHARGE PROVISION OF LAND PARCELS FOR HOUSING CONSTRUCTION/SERVICE COOPERATIVES:

## *THE AID TO PEOPLE IN NEED OR A CORRUPTION SCHEME?*

### SUMMARY

According to the State Fund for Assistance to Youth Housing Construction, in 2017 in Ukraine 657,000 people were on the waiting list as citizens in need of better housing conditions<sup>1</sup>.

For such persons who need to improve their housing, the legislator has provided a number of preferential terms. To reduce the cost of square meters of housing for such associations of citizens in the form of housing and construction cooperatives, **Ukrainian legislators have provided in the Land Code of Ukraine a privilege in the form of the opportunity to get a land parcel for construction free of charge or on preferential terms without holding land tenders.**

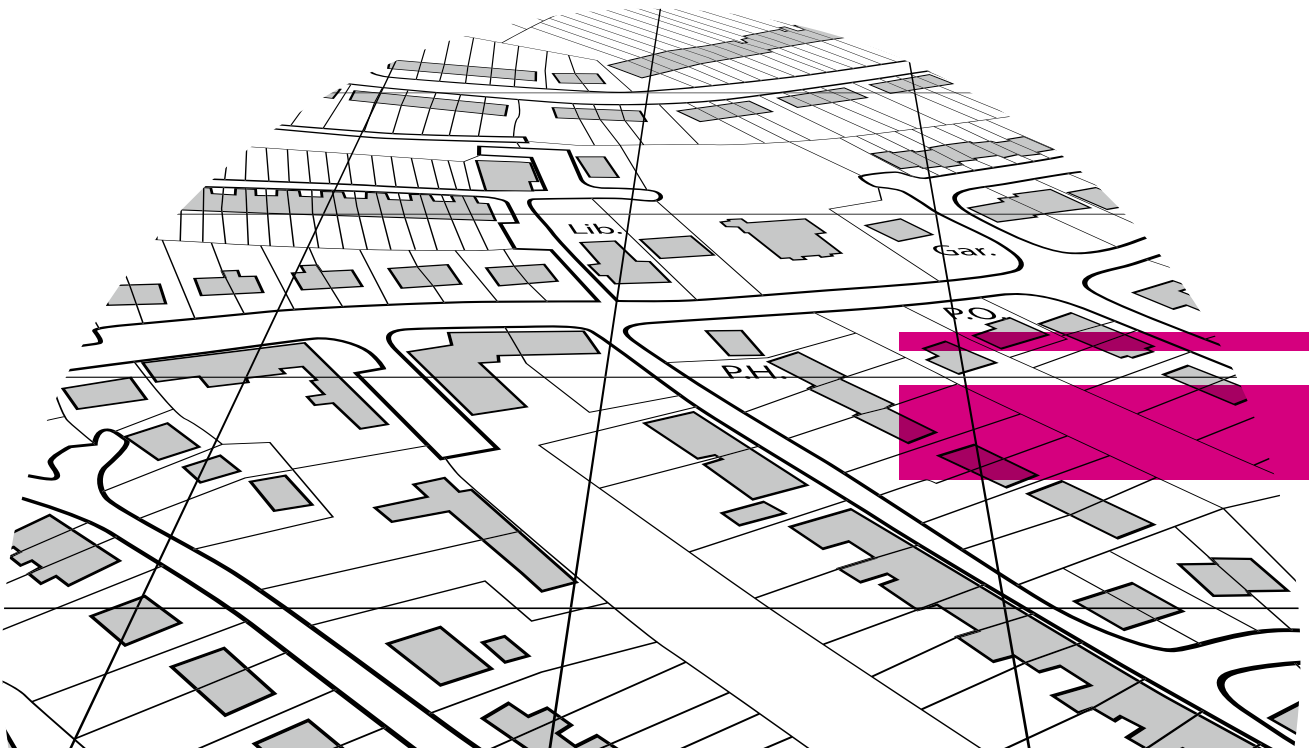
*Instead, as our study shows, free of charge land allocation within settlements is mainly used by commercial developers who construct multi-apartment residential buildings for sale in the primary market.*

**The purpose of this brief** is to substantiate the need to abrogate the legal institution of free of charge granting of land parcels for housing construction cooperatives and service cooperatives. Replacement of the specified legal institution by holding land tenders when allocating land parcels for housing construction of apartment buildings for SC and HCC.

<sup>1</sup> У Кабміні розповіли, скільки українців стоїть у чергах на нове житло // РБК-Україна: [Website]. URL: <https://www.rbc.ua/ukr/news/kabmine-rasskazali-skolko-ukraintsev-stoit-1511781671.html> (date of access: 19.11.2020).

## OBTAINED DATA:

1. There is a legal conflict between the Law of Ukraine “On Cooperation”, the Economic Code of Ukraine, the Law of Ukraine “On Local Self-Government” and the old Housing Code of the Ukrainian SSR regarding the definitions of organizational and legal forms of “housing construction” and “service cooperatives”, which allows commercial developers to avoid paying taxes and receive, free of charge or for rent without holding land auctions, land parcels in settlements for the construction of apartment buildings for sale.
2. The provisions of Article 138 of the Housing Code of the Ukrainian SSR on the control of government bodies over the activities of housing cooperatives consolidate the outdated powers of local self-government structures in the creation and control of housing construction companies, which are not reflected in the Law of Ukraine “On Local Self-Government” and may contradict the Economic Code of Ukraine and the Law of Ukraine “On Cooperation”.
3. The Decision of the Constitutional Court of Ukraine of December 20, 2019 in case No 12-p/2019 on ruling part two of Article 135 of the Housing Code of the Ukrainian SSR as unconstitutional created even greater legal uncertainty regarding the activities of housing construction cooperatives and unequal competitive conditions for housing construction cooperatives and business entities of other forms of economic activity, which is contradictory to the Constitution of Ukraine.
4. Over the past 5 years, in the cities – regional centers, land parcels that were granted by local self-government bodies to SCs and HCCs without holding land auctions did not solve the problems with housing for certain categories of citizens who needed to improve their housing conditions, but were granted to individual developers, which created unequal competitive conditions for business entities in the field of construction.
5. Article 41 of the Land Code of Ukraine, which provides for the granting of land parcels to housing construction cooperatives free of charge or for rent without holding land auctions, contradicts Article 13 of the Constitution of Ukraine, Article 6 of the Economic Code of Ukraine and Parts Two and Three of Article 134 of the Land Code of Ukraine, where legislators indicated an exclusive list of cases of granting land parcels without land auctions.



6. The broad discretionary powers granted by the current legislation to local governments in the field of land relations and unclearly defined norms for calculating the standards for the provision of land parcels by SCs or HCCs, depending on the number of members of such cooperatives and their need for housing, are corruption-generating factors and create opportunities for local authorities to abuse their position to obtain improper benefits for themselves or third parties. At the same time, in our opinion, holding land auctions for the granting of land parcels for multi-apartment residential development will help eliminate the above factors, increase the transparency of decision-making in the field of land relations and contribute to the establishment of fair competition among developers.
7. The exclusion of Article 41 from the Land Code of Ukraine on the free of charge transfer of land parcels for housing construction cooperatives and conducting land auctions when allocating land parcels for housing construction of apartment buildings for HCC and SC would help to eliminate the above corruption risks and make the process of granting communal land for use more transparent. Indeed, according to Art. 135 of the Land Code of Ukraine, “land auctions are held in the form of an auction, as a result of which a contract of sale, lease, superficies, emphyteusis of a land parcel is concluded with a participant (winner) of a land auction, who offered the highest price for the land parcel to be sold, or the highest payment for its use, recorded in the course of land auctions”. In addition, before holding land auctions for communal and state-owned land parcels, an expert monetary valuation of the land parcel is carried out in accordance with the Law of Ukraine “On Land Valuation”, except for cases of sale of the lease right for it at land auctions<sup>2</sup>. Also, the starting price of the sale of the land parcel is set, which in relation to state and communal property cannot be lower than the expert monetary value of the land parcel, or, in the case of leasing, the starting amount of the annual rent is set, which in relation to state and municipal property cannot be less than the rent, determined by the Tax Code of Ukraine<sup>3</sup>. Holding land auctions will not only eliminate corruption risks associated with discretionary powers of local governments, but will also replenish local budgets and promote the fair competition among developers.

## RECOMMENDATION

Taking into account the results of our study, we confidently recommend that legislators exclude Article 41 of the Land Code of Ukraine as contradicting other regulatory documents, the current Constitution of Ukraine and securing unequal conditions for business entities. This should help to eliminate corruption risks and would make transparent the process of provision for use the communal lands. Holding land auctions will not only eliminate corruption risks associated with discretionary powers of local governments, but will also replenish local budgets and promote the fair competition among developers.

<sup>2</sup> Земельний кодекс України // Відомості Верховної Ради України (ВВР). 2002. № 3-4. Ст. 27. URL: <https://zakon.rada.gov.ua/laws/show/2768-14#Text> (date of access: 30.11.2020).

<sup>3</sup> Закон України «Про оцінку земель» від 11.02.2203 № 1378-IV // Відомості Верховної Ради України (ВВР). 2004. № 15. Ст. 229. URL: <https://zakon.rada.gov.ua/laws/show/1378-15#Text> (date of access: 30.11.2020).

