



A STUDY ON APARTMENT BUILDING MANAGEMENT PROBLEMS IN RUSSIA

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ABSTRACT

The variety of ongoing reforms, periodically introduced changes in housing legislation, do not allow to solve the growing problems in the management of an apartment building. Undoubtedly, the housing issue is one of important and socially significant aspects of a person's life. Among the socio-economic problems, the authors include the problems associated with the implementation of common shared ownership right for common property. During the implementation of any common property, the issue of equality and inequality begins with the question on the number of votes that the participants of the general power have during a general decision making. The first decision, which the owners take at the time of starting a house operation, is the choice of the management method. Owners choose management companies as the most common form of property management. This article considers the problems of an apartment building management, the nature of their emergence is inextricably linked with the formation and the use of common communal property institution, i.e. that part of a single housing and communal complex, which is called communal property.

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1. INTRODUCTION

Speaking about the management of an apartment building, or rather the common property, it should be noted that there is one of the complex subspecies, called a communal one (common communal property). The concepts of "common property" and "common communal property" are completely different in content.

In order to study the root of house management problem in Russia, it is necessary to consider only common property as the common power of two or more individuals over the same thing (Lantsov et al, 2008). In this case, the power over people is exercised only within the organization of common property participants in the development and implementation of a common solution. Accordingly, common property participants are forced to create an organization for common property

implementation. Specifically, the creation of a legal entity allows the founders to make decisions by a majority of votes (qualified, simple, from meeting quorum, etc.).

Then the main properties of such a mechanism are the following ones:

- 1) all the founders are equal in making a general decision (they have the same number of votes);
- 2) all the issues about the specific distribution of different types of goods and burdens during the implementation of common property (for a legal entity) are not considered in advance and are determined as necessary.

The main difference of this method of common property implementation is the introduction of a formal institution of the minority subordination to the majority and the replacement of common ownership of property by common ownership via a legal entity.

Besides, this method greatly simplifies the implementation of common property. For example, a small proportion of participants, with a greater share than the other participants, can usurp the right to exercise common property and cease to take into account the interests and the rights of other participants. Therefore, during the state regulation of such a mechanism for common property implementation, it is necessary to provide for the protection of rights and freedoms of those participants who have a small number of votes.

However, in real conditions, they developed absolutely different conditions for the implementation and the management of common property in an apartment building, characterized by inequality of citizens during its implementation, which threatens the vital social and economic rights of the majority of common property participants.

In order to understand the nature and the purpose of the problem, it is important that the walls, floors and other common real estate in an apartment building is vital for the owners of all apartments in the house. To this end, the apartment owners must be the participants in common ownership of all common property in the house simultaneously so that they can implement their apartment ownership later. Therefore, all the issues about the implementation of common ownership by common property in an apartment building should be solved on an equal basis - any apartment owner must have one vote, regardless of apartment area.

2. METHODS

The basis of the research methodological base was, first of all, represented by legislative and other normative acts, as well as by the works of foreign and domestic scientists on the problems of an apartment building management.

The works of various authors are devoted to the studies of apartment building management problems (Simionova, 2004; Aliev's, 2002; Ognev, 2010). The scientific understanding of house ownership reflects an exceptional social and economic complexity of this concept. Thus, the price of public utilities grows rapidly, which is already beyond the power of many citizens (Guseinova et al, 2016). Therefore, the need to study the nature and the character of home management, as well as its ideal and the way the citizens can and should protect their right to housing in real conditions, requires an additional research.

The main methods of this study include: comparative and logical analysis, system approach, and the modeling of situations.

3. Results

The existing contradiction of ideas about a residential house is conditioned, first of all, by the misunderstanding of the term property content. In an apartment building or in another communal house, the owners of premises and the owners of construction and other structures are different persons who carry out different property. The common property is established for building structures, and personal private property may be recorded for premises. Common property should be shared by all its participants – the association of homeowners, and the ownership of the premises - by private owners. Declaring the whole house consisting only of rooms, the rights of common ownership for the common property in a house are limited in a certain part.

Today, all common property and land in a house is owned and is on the balance sheet of local government. In order the owners of housing become the participants of the common share ownership, it is necessary to implement the following measures:

Firstly, the representatives of the municipal government need to determine the boundaries, the size, the form of a land plot, to draw up land management file and register the right of land municipal ownership for any given home ownership. And also to establish the elements of landscaping, other land, underground, air structures and the structures located on a designated site and the forms of their ownership. Besides, an important socio-economic aspect is to determine the conditions of property encumbering on a land plot in the interests of society and homeowners in neighboring houses.

Secondly, state and municipal authorities need to determine and establish the size of shared ownership on a land plot for an owner of each premise in an apartment house.

Thirdly, it is necessary to carry out the inventory of all common property and bring the project documentation in accordance with the received data, highlighting the boundaries separating all private and municipal premises from common property. This property must be registered as an object of municipal property, since in fact it is in such an ownership and only the municipal authority has legal documents on it.

Fourth, it is necessary to determine the shares in the common property inside the house for each room owner. After that the local authorities need to announce the possibility of common property transfer and the rights of shared ownership to it to all willing owners of premises on a free, voluntary and contractual basis. The thing is about privatization mechanism use, but with regard to common property. There is no other legal way of property transfer. Property must be transferred to citizens on a voluntary basis under the Civil Code.

Only after the conclusion of such an agreement (on privatization) the citizens will know what property was transferred to them to and what shares they will possess.

Another important point which is economically necessary for the house management is the depreciation fund, which is developed for each house to implement capital repairs and is fixed on the

trust account, being under the order of the future owner of the house (Mukhazhinova, 2012). Nowadays, the only fair form of an apartment building management is the housing cooperative, which includes the owners of all common property in a house (Lantsov et al, 2008). Namely, ensuring that purchasers implement the right of common ownership in an apartment building by creating a housing cooperative, the owner of a common property in a home ownership and creating the conditions for a shareholder entry into such a cooperative, allows to create an effective tool to manage an apartment building. As the municipal enterprise in such cooperative is replaced by citizens, the management in the cooperative must pass to citizens-shareholders.

Only such a cooperative as a legal entity is entitled to exercise the ownership of common property in the homeownership and should not be taxed on this property. The persons who did not join such a cooperative and who do not have the privileges granted to the cooperative are required to pay tax on the property of individuals and to pay to the cooperative for the management of technical exploitation and the maintenance of common property.

4. Discussion

Today, within the framework of the legislation, there are two ways to choose a house management method:

1) a management organization is selected and hired by those persons who form an informal "meeting" (the owners of the housing);

2) the management organization is selected on the basis of the competition by the representatives of local, executive authorities (Izmailov, 2010).

The second method is the main one for today. This is due to the main reason - most citizens do not want and are not able to make decisions on the way of an apartment building management method selection. They are also not able to foresee the threat of losing their property rights to housing and will not take measures and actions to protect the rights to housing, leaving the decision-making power to local authorities.

There is the issue of the legality concerning the possibility of house management transfer to private management organizations through a contest. Let's consider the answer to this question, choosing a real private situation.

Suppose that we talk about a nine-story house, in which the number of privatized apartments is about 70%, which corresponds to the level of privatization. The remaining 30% of the premises remained in municipal ownership as the result of privatization. Suppose that the first floor of a house (10% of the total area) is occupied by commercial premises that the local authority leases out.

If they strictly comply with the provisions of the Housing Code, then the owners of the premises must have ownership rights for the premises, as well as the share in common ownership right concerning the common property in the house and the land with all other structures and landscaping. So it should be according to the code (Zhiryutina, 2016; Kotkov, 2017).

However, before the adoption of the housing code, it was necessary to develop a mechanism to transfer the right of shared ownership concerning - common property and use this right only after

that. This mechanism should include the following:

- the ownership of common property in the homeownership must be transferred from a real owner to the owners of the premises;

- the transfer of property is necessary on the basis of an application and a voluntary acceptance of shared ownership under the privatization mechanism;

- prior to the transfer of common property to the share ownership to the owners of the premises, the local government bodies must register the land management for a land plot, identify all types of common property in the homeownership, and determine the possible values of each future participant shares in common property;

- on the basis of a premise owner application and with his consent to transfer to him under the act of common property (all types of such property) and issue him a certificate of the share ownership right indicating the share in the common property and the delivery of necessary attachments to him.

Today, the owners of the housing do not know the types, the boundaries and the properties of the common property, including the land plot. They do not know the size of the shares in common property. The lack of legal documents and title documents among owners creates a problem of legality for holding meetings and decisions. Therefore, there are questions to management organizations that collect utility payments and manage apartment buildings.

Until the citizens are provided with a clearly defined, identified common property on a voluntary basis, with established and properly registered shares, this choice will not be possible on a legal basis.

Considering the socio-economic and other consequences, we note that private management organizations (these are limited liability companies) with an authorized capital of 10,000 rubles, acquire and implement the property rights of hundreds and billions of rubles, and the citizen payments they collect become the private funds of these organizations.

Thus, the use of this path is impossible, since the owners of the premises are not endowed with common property and do not have the rights to it. Only when the state and municipal authorities determine the types and other characteristics of the common property, determine the shares in common property and transfer these shares to citizens on a voluntary basis, having certified with the appropriate legal documents, it will be possible to say that the owners of the premises will become common property participants (Afanasyeva, 2011). Moreover, it is not enough to give citizens the right to share ownership, it is necessary to help them create a formal association of such owners in the form of a legal entity. After that, they will be able to implement common property, make decisions on an apartment building management and choose organizations for its maintenance.

5. Conclusions

Thus, the legislation did not regulate the mechanism and the conditions for the transfer of shared ownership. In particular, it has not been established and the possibility has not been given to the local self-government bodies to register the land management case in the required manner and to transfer legally the ownership rights for common property to the owners of housing. Besides, it is not

reflected that a share ownership right must be registered and provided with a certificate of ownership right.

The owners of a housing do not know where they are and what their common property is. They do not know what share each of them has in common ownership. They have no evidence of such a right. Thus, an unfinished work is created, which subsequently leads to socio-economic problems in the management of a multi-apartment building by the managing organizations.

6. 6 Summary

So, the process of an apartment building management must always begin with the definition and the establishment of common property composition, the the shares of the owners in it, which in the future allow to take decisions at meetings. Undoubtedly, a meeting is an authority only as the part of a legal entity, and the thing can only be about the meeting of such an entity founders. If citizens are not the part of a legal entity founders or a legal entity does not exist, then no decisions of any other meetings can and should not be considered compulsory for free citizens.

However, today, on the one hand, the obligation to purchase the ownership of common property by citizens was introduced, and on the other hand, the right to share ownership of it was not transferred. This means that the owners of living quarters are given the burden to maintain the non-existent common property for them, and on the other hand they are denied the right to exercise common property right, since the property is not transferred. Not so much property as the burden of property is imposed in isolation from property benefit, the size of which is determined by the management organizations. If the owners of apartments create a legal entity, for example, a housing cooperative, they will cease to be the participants in the shared ownership of the common property. They will become the owners of the legal entity as the founders, and the legal entity will become the owner of the common property, which belonged to the founders before the creation of this entity.

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