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The Right Of A Married Couple And Other Family Members To Use The Property

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ABSTRACT

The article examines the current issues of the law and practice of family members in the Civil and Housing Code of the Republic of Uzbekistan, analyzes the theoretical views of legal scholars and legislation. In practice, some problems related to the incorrect qualification of the norms for the use of property by family members were also investigated. At the same time, reasonable, constructive proposals were made for the use of the property by family members.

KEYWORDS

Family members, couple, property, housing, private property, usufruct, superficies, property law.

INTRODUCTION

It is known that housing has a special legal regime as a permanent and basic need of a person [1]. In this case, the property rights of the owner and the use of family members have a special character. After all, it is especially important to determine the relationship

between property rights and its elements, the study of issues related to the use of family members.

THE MAIN FINDINGS AND RESULTS

The Constitution of the Republic of Uzbekistan stipulates that everyone has the right to own property. This, in turn, has given a great impetus to the opening of private property in the country and the formation of a sense of ownership in people, as well as increased the ability of individuals to meet their material and spiritual needs.

As a result of the adoption of the Law of the Republic of Uzbekistan “On Privatization of the State Housing Fund” of May 7, 1993 [2], it can be said that the problem of property rights to housing and its use has been somewhat eliminated.

Article 12 of the law stipulates that apartments cannot be privatized even if two or more tenants live there, some of whom do not agree to privatization. According to Article 13 of the law, the persons who agreed to the privatization of housing must retain the right to use the living space, and the sale or lease of privatized housing must be carried out with their consent.

In the 1990s, disputes over the exercise of family members' property rights to housing continued. The participation of family members in the privatization process, requiring their consent to the disposal of the property rights, influenced the disposal of the property rights.

According to the amendments to the Housing Code of the Republic of Uzbekistan dated October 11, 2018, the right to use housing of a person who consented to the privatization of housing is not part of the inheritance opened after his death (Article 32). As a result of changes in legislation over time, the dispute

has put an end to the courts' differing approaches to the issue. This is because the secondary housing market has also developed for some time.

A specific approach in this regard is related to the definition of family members in the code. Article 5 of the Family Code defines family members: spouses, parents and children (adoptees and adopted children). According to Article 32 of the Housing Code of the Republic of Uzbekistan, family members of a homeowner are his wife (husband) and their children living with him permanently. The parents of the couple, as well as married children living permanently with the owner and their spouse, may be recognized as family members of the owner only by mutual agreement if they have not previously had this right.

According to Article 9 of the Housing Code of the Republic of Uzbekistan, special houses (dormitories, temporary housing, boarding houses for the disabled, veterans, lonely elderly people, intended for permanent residence of citizens, meeting the established sanitary, fire, technical requirements, as well as in the prescribed manner, as well as places intended for use as orphanages and other special-purpose houses) [3].

Accommodation is also real estate due to the following features:

1. Integral connection of housing with land;
2. Inability to move accommodation from one place to another;
3. Inability to use the accommodation for its intended purpose when relocated;
4. When a dwelling is moved, its shape and body change, if a dwelling or a house is

moved, its properties are lost, and if it is damaged or cracked, the shape of the house will change in the future. It is impossible to build a house with such materials, even if it is demolished and built elsewhere [3].

From the above, it can be seen that housing as a real estate is distinguished by its unique features. However, according to Article 209 of the Civil Code, any property can be private property, except for certain items prohibited by law. There is no full opportunity to exercise the right of private property in relation to the land plot.

According to O. Okyulov, there is a certain conflict between social and private interests in the introduction of private ownership of land. The essence of social relations in relation to land is that both our people as a whole and every citizen individually want to use these lands now, in the future and for future generations. The legal regime established in the current laws in relation to land is aimed at ensuring the same social interests [4, p. 30].

The rapid development of market relations requires that the land also be included in full civil circulation, allowing for the conclusion of contracts for the sale or other disposal of property rights. This, in turn, puts the introduction of private property rights over land on the agenda.

At present, the President of the Republic of Uzbekistan 2019

The draft law “On approval of the Civil Code of the Republic of Uzbekistan”, developed to ensure the implementation of the order of the President of the Republic of Uzbekistan No F-5464 dated April 5 “On measures to improve

the civil legislation of the Republic of Uzbekistan” was submitted for public discussion [5].

The project pays special attention to the specific achievements, the implementation of the goals and objectives set out in the concept. It also includes constructions and rules related to property rights, and it would be appropriate to record these achievements.

According to the current FC, the right to build (super fiction) was not provided. The draft FC specifies the right to build (super fiction), which includes the concept of super fiction, the basic conditions, payment for it, and the termination of the super fiction. The draft FC also defines the right of personal use and possession (usufruct), which also includes the types of usufruct, the determination of the status of the object, the rights and obligations of the usufructuary, the rules for the termination of usufruct.

Although the usufruct specifies the application of the rules established for the acquisition of movable and immovable property as well as intangible benefits, the usufruct in the FC project may be established only in respect of real property. In essence, usufruct can be defined in relation to both real estate and movable property. Article 581 of the French Civil Code provides for this possibility. Under French law, another usufruct may be established in favor of the parents of the children in respect of the usufruct which is part of the property bequeathed to the children (Articles 382-387). In contrast, the German Civil Code prohibits the designation of usufruct in relation to usufruct (§ 1059b).

Although the draft FC stipulates that usufruct can be assigned to legal entities, the question of how long it can be granted remains open. According to the French Civil Code, a term of no more than 30 years may be imposed (Article 619). It appears that the legislature has chosen the path of the German Civil Code and stipulates that usufruct may be imposed until the legal entity is liquidated.

The right to use housing on the basis of limited property rights is also a form of “usufruct” known in ancient Rome. It, in turn, means taking profit, income (including produce and income) from someone else’s real estate while retaining it [6]. In this case, unlike the easement, usufruct also imposes certain obligations on the user. For example, the provision of goods for use, payment of fees, etc., [7, pp. 78-79]. This property right is not provided by civil law. It should be noted that certain elements of this right are provided for in the current civil legislation of the CIS and, in particular, the Republic of Uzbekistan (for example, Article 32 of the Housing Code).

The jurisprudence, on the other hand, naturally faces difficulties in applying Article 32 of the Housing Code. On the one hand, the protection of the rights of family members, especially minors, and women, on the other hand, requires the exercise of the rights of the owner. True, the landlord can dispose of the home even if other people have the right to use it. In this case, the owner or family members can often become victims of various offenses (blackmail, extortion, fraud, etc.).

However, it should be borne in mind that the simultaneous existence of elements of property rights, in particular the important rule of the contract of sale, that is, the right to

dispose of housing without the transfer without the rights of third parties, cannot be exercised literally.

Based on the above, it should be noted that the usufruct is due to the fact that the norm is limited to a certain period of time. The usufruct rule has been widely used in court practice as a right of certain persons in the form of a certain norm (Article 32 of the Housing Code). The subtlety of the matter is that this exercise was largely exercised by those who were "able" to exercise the right. Otherwise, it is also known that the landlord is subjected to various pressures by selling or renting the home.

Usufruct should not be seen as a personal servitude, as it is another type of property right limited to another's property.

In our opinion, usufruct originated in Ancient Rome as the right of family members to use things. This is because usufruct stems from the need to provide assistance to those who need to be cared for by the owner. Some experts also emphasize this right as a right that clearly performs the function of alimony [8, p. 262]. For example, according to the legate, the father of the family (pater families) provided his widow with income from the inherited property, even though the heir was another person.

According to Article 32 of the Housing Code, the interests of the minor family members of the privatized homeowner are represented by their parents and in their absence by the guardianship and trusteeship authorities. However, the issue of protecting the rights of family members, especially minors, in cases where they have lost their right to housing remains.

CONCLUSION

In our opinion, it is appropriate to include the following ninth paragraph in Article 32 of the Housing Code:

In the event that a minor loses the right to reside in the residence where the parent resides or is unable to reside, the court may order each parent to be involved in the additional costs of providing the children with housing. Accommodation for children can be provided through the purchase or rental of housing, depending on the parent's choice.

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