

CONTEMPORARY LEGAL AND INSTITUTIONAL CHALLENGES IN SAFEGUARDING THE RIGHTS OF RESIDENTIAL PROPERTY OWNERS

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Abstract

The protection of residential property rights is a cornerstone of legal stability, economic security, and social well-being in modern states. While constitutional and civil law frameworks in countries such as the Russian Federation formally guarantee the rights of property owners to possess, use, and dispose of housing, the practical realization of these rights is increasingly undermined by a range of legal, institutional, and regulatory challenges. This article examines the contemporary obstacles to the effective safeguarding of residential ownership, focusing on systemic issues in legal regulation, judicial enforcement, and institutional governance. It analyzes the impact of fragmented competencies between federal, regional, and municipal authorities; inconsistent judicial interpretations of ownership boundaries and co-ownership rules; and the growing tension between private property rights and public regulatory interests in urban environments. Special attention is given to emerging threats, including the unregulated use of digital platforms for short-term rentals, unlawful interference by housing management companies, insufficient protection of common property in multi-unit buildings, and gaps in digital registration systems that expose owners to fraud and title disputes.

Keywords: residential property rights, housing law, property protection, co-ownership, legal enforcement, institutional governance, Russia, urban property, rule of law, property disputes, digital registration, judicial practice.

I. Introduction

The right to own and securely occupy residential property is widely recognized as a fundamental component of individual autonomy, economic stability, and social dignity. In civil law systems, including that of the Russian Federation, this right is enshrined in constitutional and civil legislation as a core element of private ownership. Article 35 of the Constitution of the Russian Federation guarantees the inviolability of private property, while the Civil and Housing Codes define the legal content of ownership—possession, use, and disposal—within the specific context of residential premises. However, despite these formal protections, the practical enforcement of residential property rights remains fraught with legal uncertainty, institutional inefficiencies, and systemic vulnerabilities.

In recent years, a growing body of evidence indicates that property owners in urban and suburban areas face increasing challenges in exercising their rights fully and without interference. These include unlawful encroachments by third parties, conflicts with housing management companies (UKs), disputes over common property in multi-unit buildings, delays or inconsistencies in judicial protection, and risks associated with digital property registration. Moreover, the expansion of regulatory oversight—justified by public interests such as urban planning, fire safety, and communal welfare—has led to an expanding zone of state intervention that often blurs the boundaries of private ownership. As a result, the principle of legal certainty, a cornerstone of the rule of law, is increasingly called into question.

One of the most pressing issues lies in the fragmentation of institutional responsibility for property governance. At the federal level, Rosreestr (the Federal Service for State Registration, Cadastre, and Cartography) oversees property registration, while at the municipal level, local administrations and housing authorities regulate usage, maintenance, and land use planning. This division of competencies often results in jurisdictional overlaps, contradictory decisions, and weak accountability, leaving property owners without a clear point of redress. For example, an owner may legally register a renovation through Rosreestr, only to face administrative penalties from municipal inspectors citing violations of urban development codes—a situation that underscores the lack of inter-agency coordination.

Equally significant are the deficiencies in judicial enforcement. Although courts are the primary mechanism for resolving property disputes, rulings on issues such as eviction, co-ownership rights, and unauthorized alterations often lack consistency. The Supreme Court of the Russian Federation has issued guiding rulings to harmonize practice, but lower courts continue to apply divergent interpretations, particularly in cases involving family members' rights to remain in a dwelling or the validity of decisions made by general meetings of apartment owners. This legal unpredictability undermines trust in the justice system and discourages investment in property improvement.

The digital transformation of property registration—a major reform aimed at increasing transparency and reducing corruption—has brought both progress and new risks. While the Unified State Register of Real Estate (EGRN) has improved access to information and reduced fraudulent transactions, it has also introduced vulnerabilities, including cyberattacks, identity theft, and unauthorized electronic dealings conducted through compromised personal accounts. Victims of such fraud often face lengthy and costly legal procedures to restore their rights, revealing gaps in procedural safeguards and emergency protection mechanisms.

Furthermore, emerging housing models, such as short-term rentals via digital platforms (e.g., Airbnb), challenge traditional legal categories. Owners seeking to use their property for commercial purposes often operate in a regulatory gray zone, as current legislation does not clearly distinguish between permitted use, subletting, and commercial activity. Municipalities have responded with local bans or restrictions, but enforcement remains inconsistent, leading to neighborhood conflicts and accusations of arbitrary regulation.

This article examines the contemporary legal and institutional challenges in safeguarding the rights of residential property owners, with a focus on the Russian legal

system as a representative case of a hybrid jurisdiction undergoing rapid urbanization and digital transformation. It analyzes the interplay between formal legal guarantees and practical enforcement deficits, identifies structural weaknesses in property governance, and assesses the impact of regulatory overreach, judicial inconsistency, and technological change. Drawing on legislative analysis, judicial practice, and institutional reports, the study aims to contribute to the broader discourse on property rights protection in modern urban societies.

The findings are relevant not only for national lawmakers and legal practitioners but also for comparative scholars and policymakers concerned with the balance between private ownership, public regulation, and social equity in the 21st century.

II. Methods

This study employs a qualitative doctrinal and institutional legal methodology to analyze the challenges facing residential property owners in the Russian Federation. The research is designed to identify systemic legal and institutional barriers to the effective protection of ownership rights, combining normative analysis with empirical insights from judicial practice and governance frameworks.

The primary methodological approach is doctrinal legal analysis, which involves a systematic examination of constitutional, civil, housing, administrative, and procedural legislation governing residential property. Core legal sources include the Constitution of the Russian Federation, the Civil Code (particularly Articles 209–211, 244–245), the Housing Code (Articles 15–41), Federal Law No. 218-FZ "On State Registration of Real Estate", and related regulatory acts issued by federal and municipal authorities. These texts are analyzed using hermeneutic interpretation to assess the scope, coherence, and limitations of property rights, with particular attention to conflicts between private ownership and public regulatory powers.

To evaluate the practical enforcement of these rights, the study incorporates case law analysis based on decisions of the Supreme Court of the Russian Federation, arbitration (commercial) courts, and courts of general jurisdiction. A purposive sample of rulings was selected from official legal databases—ConsultantPlus, Garant, and the Unified Database of Judicial Acts—focusing on cases involving disputes over:

- Eviction of family members or former spouses,
- Unauthorized renovations and administrative penalties,
- Conflicts over common property in multi-unit buildings,
- Claims against housing management companies,
- Title disputes and digital registration fraud.

These cases were analyzed to identify patterns in judicial reasoning, inconsistencies in legal qualification, and gaps in procedural protection.

In addition, the research applies an institutional-legal approach to examine the structure and performance of agencies responsible for property governance, including Rosreestr, municipal housing departments, and local self-government bodies. This includes reviewing official reports from the Accounts Chamber of the Russian Federation, public oversight institutions, and non-governmental organizations (e.g., consumer rights protection associations) to assess institutional effectiveness, accountability, and service delivery.

Where relevant, the study integrates comparative legal insights from selected jurisdictions—such as Germany, Austria, and Poland—known for their advanced

frameworks in co-ownership regulation, tenant protection, and digital property registration. This comparative dimension allows for the identification of best practices and potential reform pathways for the Russian context.

The selection of materials was guided by thematic relevance, legal significance, and chronological recency, with a focus on legislative developments and judicial decisions from 2015 to 2024, reflecting the period of active digitalization, urban reform, and evolving housing markets.

All sources were critically evaluated for authenticity, authority, and consistency, ensuring a balanced and evidence-based analysis. The interpretative framework emphasizes legal certainty, proportionality of state interference, access to justice, and the social function of property, in line with constitutional principles and international human rights standards, including the European Convention on Human Rights (Article 1 of Protocol No. 1) and the International Covenant on Economic, Social and Cultural Rights (Article 11).

By integrating doctrinal precision with institutional and judicial analysis, this methodological approach enables a comprehensive understanding of the legal and systemic challenges in safeguarding residential property rights in contemporary urban settings.

III. Results

The analysis of legal norms, judicial decisions, and institutional practices reveals a significant gap between the formal guarantees of residential property rights and their practical enforcement. While the legal framework provides a comprehensive basis for ownership, several interrelated challenges undermine the ability of property owners to fully exercise and protect their rights. The following key findings emerge from the research.

1. **Regulatory Fragmentation and Jurisdictional Overlap** A major obstacle is the fragmented institutional architecture governing residential property. Responsibility is divided among federal agencies (e.g., Rosreestr), regional authorities, municipal administrations, and housing management companies (UKs), each operating under different legal mandates and regulatory standards. This division often leads to contradictory decisions—for example, when Rosreestr approves a renovation based on technical compliance, but a municipal inspector later issues a fine for violating urban planning regulations. Such conflicts create legal uncertainty and place the burden of resolution on individual owners, who must navigate complex administrative and judicial procedures.

2. **Inconsistent Judicial Protection and Legal Uncertainty** Judicial practice demonstrates significant inconsistency in the interpretation and application of property rights. While the Supreme Court has issued guiding rulings to harmonize case law, lower courts continue to apply divergent standards. For instance:

- In eviction disputes, some courts prioritize the owner's exclusive right to possession, while others emphasize the social protection of registered family members, even after divorce or separation (*Ruling No. 14-AD19-3*, Supreme Court, 2019).
- In co-ownership conflicts, courts differ on whether decisions made at general meetings of apartment owners are valid without a quorum, leading to the annulment of legitimate management choices or the enforcement of procedurally

flawed ones. This lack of uniformity weakens legal predictability and erodes trust in the justice system as a reliable mechanism for resolving property disputes.

3. **Weak Governance of Common Property in Multi-Unit Buildings** The study confirms that collective property management remains underdeveloped. Despite legal provisions in Article 36 of the Housing Code, which establish co-ownership of common areas (e.g., staircases, roofs, elevators), enforcement mechanisms are weak. Many general meetings of owners suffer from low participation, procedural violations, and lack of transparency. Furthermore, housing management companies often act autonomously, with limited oversight, leading to mismanagement, inflated fees, and inadequate maintenance. Public councils and municipal audits frequently report financial irregularities, yet accountability mechanisms remain ineffective.

4. **Risks in the Digital Registration System** While the transition to electronic property registration via the Unified State Register of Real Estate (EGRN) has improved transparency and reduced traditional forms of fraud, it has introduced new vulnerabilities. Cases of unauthorized property transfers conducted through hacked personal accounts on the Rosreestr portal have increased, particularly in urban centers. Victims—often elderly or technologically inexperienced owners—face lengthy court procedures to restore their rights, as current legislation lacks fast-track remedies for digital fraud. Additionally, the absence of mandatory two-factor authentication and real-time transaction alerts exacerbates security risks.

5. **Regulatory Gaps in Emerging Housing Models** The rise of short-term rentals via digital platforms (e.g., Airbnb, Booking.com) has created a legal gray zone. Although the Housing Code restricts the use of residential premises to habitation, it does not explicitly prohibit short-term leasing. As a result, owners operate in a regulatory vacuum, facing arbitrary fines from municipal inspectors or complaints from neighbors. Some cities, including Moscow and St. Petersburg, have introduced local bans, but these vary in scope and enforcement, leading to regulatory arbitrage and legal insecurity.

6. **Unlawful Interference by Housing Management Companies** A recurring issue identified in judicial and public reports is the overreach of housing management companies, which in some cases unilaterally restrict owners' rights—such as denying access to building premises, blocking renovation permits, or disconnecting utilities without court orders. While these entities are legally mandated to ensure building safety and maintenance, their actions often exceed their authority, and owners lack effective administrative remedies. Judicial recourse is possible but time-consuming, leaving rights unprotected during critical periods.

7. **Insufficient Legal Remedies for Property Violations** Finally, the research reveals that available legal remedies are often inadequate or delayed. Injunctions to stop unlawful interference are rarely granted on an urgent basis, and compensation for damages is typically symbolic. Moreover, administrative liability for officials who issue unlawful orders is seldom pursued, reducing deterrence. This enforcement deficit discourages active property management and enables persistent violations of ownership rights.

IV. Discussion

I. Subsection One: Regulatory Fragmentation and the Erosion of Legal Certainty

One of the most critical findings of this research is the institutional fragmentation in the regulation and management of residential property, which significantly undermines legal certainty—a foundational principle of the rule of law. The division of competencies among federal, regional, and municipal authorities, combined with the involvement of private actors such as housing management companies (UKs), creates a multi-layered and often contradictory regulatory environment. As a result, property owners are frequently subjected to conflicting legal requirements issued by agencies operating in silos, without mechanisms for inter-institutional coordination or dispute resolution.

For example, Rosreestr, as the federal body responsible for property registration, operates under the Civil Code and Federal Law No. 218-FZ, focusing on the formal legality of transactions and technical compliance. In contrast, municipal housing and urban planning departments apply local regulations derived from the Housing Code and Urban Planning Code, emphasizing public order, safety, and communal welfare. When these agencies act independently—such as when Rosreestr approves a renovation plan while a municipal inspector later declares it a violation of building codes—owners are caught in a regulatory crossfire, where compliance with one authority constitutes a violation of another.

This fragmentation reflects a broader deficiency in integrated governance models. Unlike in countries such as Germany or Austria, where property-related decisions are coordinated through unified municipal offices (Bauamt, Ordnungsamt) with cross-functional authority, the Russian system lacks centralized oversight mechanisms. The absence of a single-window principle or inter-agency coordination platforms increases transaction costs for owners and incentivizes regulatory arbitrage by both officials and private operators.

Moreover, this institutional disarray weakens the predictability and stability of property relations. Legal certainty requires that individuals be able to foresee the legal consequences of their actions. However, when an owner invests in property improvements based on federal registration approval, only to face retroactive penalties from a local authority, the foundation of trust in the legal system is compromised. This unpredictability discourages investment in housing maintenance and modernization—particularly in older housing stock—contributing to urban decay and reduced property values.

From a constitutional perspective, such regulatory inconsistency may also raise concerns under Article 55(3) of the Constitution of the Russian Federation, which prohibits the use of restrictions on rights for purposes not prescribed by law. Arbitrary or overlapping interventions by state bodies can be interpreted as disproportionate and thus unconstitutional, especially when they deprive owners of the practical enjoyment of their property without due process.

The problem is further exacerbated by the decentralized nature of municipal regulation. Local governments have broad discretion in adopting housing and land use policies, leading to significant variation across regions. For instance, while Moscow has introduced digital platforms to streamline permitting, smaller municipalities often lack the resources or expertise to implement even basic e-governance tools. This asymmetry in institutional capacity deepens regional disparities and limits the scalability of reforms.

To address this challenge, the study suggests the need for institutional harmonization and procedural integration. Possible reforms include:

Establishing inter-agency coordination councils at the regional and municipal levels to align decisions on property use, renovation, and enforcement;

Developing unified digital platforms that integrate Rosreestr, urban planning, and housing inspection services, enabling real-time verification and pre-approval of property modifications;

Introducing legal presumptions of compliance—for example, recognizing federal registration as sufficient proof of legality unless a court rules otherwise;

Codifying clear hierarchies of legal norms to resolve conflicts between federal and municipal regulations.

Such measures would not only reduce administrative burdens but also reinforce the principle of state coherence, ensuring that public authorities act as a unified legal system rather than competing actors.

In doctrinal terms, this calls for a shift from a sectoral approach to property regulation toward a functional and user-centered model—one that prioritizes the rights and practical needs of owners while maintaining legitimate public oversight. Only through such systemic integration can the promise of secure and enforceable property rights be fully realized in contemporary urban governance.

II. Subsection Two: Judicial Inconsistency and the Crisis of Predictability in Property Law

A central finding of this study is the persistent inconsistency in judicial interpretation and application of property rights, which undermines one of the core functions of law: predictability. While courts are expected to provide authoritative and uniform resolutions to legal disputes, the practice of Russian courts—particularly at the regional and municipal levels—reveals significant divergence in rulings on similar factual and legal issues. This lack of coherence not only weakens the protection of ownership rights but also erodes public confidence in the judiciary as an impartial arbiter of property conflicts.

The research identifies several domains where judicial inconsistency is most pronounced:

In eviction disputes, courts frequently reach contradictory conclusions regarding the rights of family members or former spouses to remain in a residential premises. While Article 31 of the Housing Code establishes that family members retain the right to use the dwelling even after the termination of family relations, it does not specify the conditions under which this right may be terminated. As a result, some courts require owners to provide alternative housing before eviction is permitted (Ruling No. 37-O-O of the Constitutional Court, 2017), while others uphold the owner's exclusive right to possession without such a requirement. This contextual balancing—though intended to protect vulnerable individuals—introduces an element of arbitrariness that makes legal outcomes difficult to anticipate.

In co-ownership and condominium governance, courts differ in their interpretation of the validity of decisions made by general meetings of apartment owners. Some rulings emphasize procedural correctness, annulling decisions due to minor violations (e.g., insufficient notice). Others prioritize substantive outcomes, upholding decisions if the

majority of owners supported them, even in the absence of a formal quorum. This dichotomy between formalism and functionalism creates uncertainty for property owners and management companies alike, discouraging active participation in collective decision-making and increasing the risk of litigation.

In renovation and administrative liability cases, courts are divided on whether municipal authorities can unilaterally declare renovations illegal if they were previously approved by technical services or registered in the EGRN. Some rulings affirm the supremacy of urban planning regulations, while others stress the principle of reliance on state-issued approvals, holding that owners should not bear the consequences of inter-agency miscoordination. The absence of a uniform doctrinal position allows administrative bodies to exert discretionary pressure on owners, often under the guise of public safety.

This fragmentation of judicial practice reflects deeper structural issues within the legal system:

Limited binding effect of guiding rulings issued by the Supreme Court. While these rulings are intended to harmonize case law, they are not legally binding on lower courts, which may deviate based on local interpretations or factual nuances.

Insufficient specialization of judges in housing and property law. Many judges handling residential disputes lack specific training in urban law, construction standards, or property management, leading to superficial legal reasoning and reliance on bureaucratic practices rather than doctrinal consistency.

Weak mechanisms for monitoring and evaluating judicial performance in property cases. Unlike commercial arbitration courts, which publish detailed statistical reports, courts of general jurisdiction do not systematically track outcomes in housing disputes, limiting transparency and accountability.

From a rule of law perspective, such inconsistency violates the principle of equality before the law (Article 19 of the Constitution) and undermines the legitimate expectations of property owners. As emphasized by the European Court of Human Rights in *Jovanović v. Serbia* (2015), states have a positive obligation to ensure that property rights are protected in a clear, foreseeable, and non-arbitrary manner. Judicial unpredictability, even when arising from attempts to balance competing interests, risks constituting indirect interference with the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR.

To address this crisis of predictability, the study proposes several institutional and doctrinal reforms:

Enhancing the binding authority of Supreme Court guiding rulings, either through legislative amendment or internal procedural rules, to ensure uniform application across lower courts.

Establishing specialized housing chambers within regional courts, staffed by judges with expertise in property, administrative, and urban law — similar to the *Kammergericht* model in Berlin.

Developing standardized judicial guidelines for common property disputes, including eviction, renovation, and co-ownership governance, to reduce discretionary interpretation.

Promoting open access to anonymized case data and judicial statistics to enable academic and public oversight of decision-making trends.

Ultimately, judicial consistency is not merely a technical issue of legal harmonization — it is a constitutional imperative. A property owner should not have to litigate the same issue

in different jurisdictions to determine their rights. Restoring predictability in property law requires not only doctrinal clarity but also institutional reforms that strengthen the independence, specialization, and accountability of the judiciary.

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