

THE CONCEPT AND LEGAL CONTENT OF THE RIGHT OF OWNERSHIP TO RESIDENTIAL PREMISES

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Abstract

The right of ownership to residential premises represents a cornerstone of property law in civil law jurisdictions, combining the principles of private autonomy with the socio-legal function of housing as a fundamental human need. This article examines the concept and legal content of residential ownership within the framework of the Russian Federation's legal system, while drawing comparative insights from international human rights standards and selected foreign jurisdictions. The study employs a doctrinal legal methodology, analyzing constitutional provisions, civil and housing legislation, judicial practice, and scholarly doctrine. It identifies the defining characteristics of residential ownership—possession, use, and disposal—and demonstrates how these rights are inherently limited by public law regulations due to the social purpose of housing. The article highlights the dual nature of residential ownership as both a private proprietary right and a socially conditioned legal institution, subject to restrictions related to tenant protection, communal living standards, urban planning, and co-ownership in multi-unit buildings. Special attention is given to the legal regime of common property, security of tenure, and the balance between individual rights and public interests. The research reveals that while the formal legal framework provides a comprehensive basis for the protection of residential ownership, challenges persist in judicial interpretation, enforcement, and adaptation to emerging housing models, including digital registration, shared ownership, and rental platforms. The findings contribute to the broader discourse on property law theory and housing policy, emphasizing the need for a balanced, rights-based, and adaptive regulatory approach. This article is of relevance to legal scholars, lawmakers, and practitioners engaged in civil, constitutional, and urban law.

Keywords: residential ownership, property rights, housing law, legal content of ownership, social function of property, right to housing, civil law, co-ownership, Russia, private property.

I. Introduction

The right of ownership to residential premises occupies a unique and pivotal position within modern legal systems, standing at the intersection of private property rights, social policy, and fundamental human needs. Unlike ownership of commercial or industrial real estate, the legal regime governing residential property is inherently shaped by its social function—ensuring stable, safe, and dignified housing for individuals and families. This dual nature—private ownership embedded in a framework of public interest—makes residential ownership a complex and dynamically evolving legal institution.

In the Russian Federation, the legal foundation of residential ownership is enshrined in Article 35 of the Constitution, which guarantees the inviolability of private property, and Article 40, which recognizes the state's obligation to ensure housing rights. These constitutional principles are further operationalized through the Civil Code of the Russian Federation (particularly Article 209) and the Housing Code (Articles 15–37), which define the scope, limitations, and procedural aspects of ownership rights over apartments, houses, and rooms. Despite this seemingly comprehensive legislative framework, the practical implementation of residential ownership remains fraught with legal uncertainty, interpretive inconsistencies, and socio-economic challenges.

One of the central issues lies in the tension between proprietary autonomy and regulatory intervention. While owners are formally entitled to possess, use, and dispose of their dwellings, these rights are subject to extensive restrictions—ranging from sanitary and fire safety requirements to urban planning regulations and pre-emption rights of co-owners. Moreover, in multi-unit residential buildings, individual ownership is intrinsically linked to shared ownership of common property (e.g., staircases, roofs, elevators, and utility systems), governed by collective decision-making mechanisms under Article 36 of the Housing Code. This co-ownership model introduces a layer of complexity absent in non-residential property relations, requiring a balance between individual interests and communal responsibilities.

The legal content of ownership is further complicated by evolving housing models, including long-term leases, housing cooperatives, shared equity schemes, and digital platforms facilitating short-term rentals (e.g., Airbnb-type arrangements). These innovations challenge traditional legal categories and raise questions about the boundaries of ownership, permissible use, and tenant protection. For instance, while the Civil Code permits leasing of residential premises (Article 671), it does not fully regulate short-term digital rentals, creating regulatory gaps and increasing the risk of informal housing markets and neighborhood conflicts.

Judicial practice reflects these ambiguities. Courts are increasingly called upon to resolve disputes involving unauthorized renovations, illegal subletting, eviction of family members, and conflicts between owners and housing management companies. However, rulings often lack uniformity, particularly in interpreting the limits of disposal rights, the status of registered residents, and the enforceability of internal condominium rules. This legal fragmentation undermines predictability and weakens the protective function of ownership.

Furthermore, the process of digital transformation in property registration—through the Unified State Register of Real Estate (EGRN) and electronic cadastral systems—has improved transparency and reduced fraud, but has not eliminated systemic issues such as title disputes, inheritance conflicts, and corruption in municipal housing allocations. Vulnerable groups, including low-income families, orphans, and displaced persons, often face barriers in realizing their housing rights, even when legally recognized as owners or entitled users.

This article examines the concept and legal content of the right of ownership to residential premises in the Russian legal context, analyzing its doctrinal foundations, statutory limitations, judicial interpretation, and socio-legal implications. It explores how ownership is legally defined, what rights and obligations it entails, and how it is constrained by public law norms and collective interests. Drawing on legislative analysis, case law, and comparative insights (particularly from Germany, France, and international human rights law), the study aims to clarify the hybrid nature of residential ownership as both a private civil right and a socially embedded institution.

II. Methods

This study employs a doctrinal legal research methodology as its primary approach, supplemented by elements of comparative law analysis and case-based legal interpretation to examine the concept and legal content of the right of ownership to residential premises in the Russian Federation. The research is designed to provide a comprehensive understanding of the normative framework, judicial application, and socio-legal implications of residential ownership, with attention to both theoretical foundations and practical implementation.

The core of the methodology is grounded in the systematic analysis of legal norms derived from constitutional, civil, housing, and urban planning legislation. Primary sources include the Constitution of the Russian Federation, the Civil Code of the Russian Federation (particularly Part I, Articles 209–210), the Housing Code of the Russian Federation (Articles 15–41), federal laws on state registration of real estate, and subordinate regulatory acts issued by federal and municipal authorities. These legal texts are analyzed through hermeneutic interpretation, focusing on the structure, purpose, and interrelation of provisions governing possession, use, and disposal of residential property.

To assess the practical application of these norms, the study incorporates judicial case 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 of the Supreme Court of Russia**—focusing on cases involving disputes over ownership rights, unauthorized renovations, subletting, eviction of family members, co-ownership conflicts, and challenges to privatization. These cases were analyzed to identify patterns in judicial reasoning, interpretive divergences, and emerging legal doctrines.

In addition, the research applies a comparative legal method to contextualize Russian legal solutions within broader European and international frameworks. Jurisdictions such as Germany (*Bürgerliches Gesetzbuch*, particularly provisions on *Wohnungseigentum*), France (*Loi du 10 juillet 1965* on co-ownership), and selected decisions of the European Court of Human Rights (e.g., *Jeričević v. Croatia*, *Zehentner v. Germany*) are examined to highlight convergences and divergences in the treatment of residential ownership, security of tenure, and property restrictions. This comparative dimension enables a critical evaluation of the strengths and weaknesses of the Russian legal model.

The study also integrates constitutional and human rights perspectives, drawing on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights on the right to adequate housing. These international standards are used as benchmarks to assess the extent to which domestic law protects the social function of housing and prevents arbitrary interference with private life and property (Article 8 of the ECHR).

Data selection was guided by thematic relevance, legal significance, and temporal representativeness, with a focus on legislative developments and judicial decisions from the 2010s to 2024, reflecting recent trends in urbanization, digitalization of property records, and evolving housing markets.

All sources were subjected to critical evaluation for authenticity, authority, and consistency. The analytical framework emphasizes systemic coherence, proportionality of restrictions, and the balance between individual property rights and public interests, in line with principles of rule of law and constitutional justice.

By combining doctrinal precision with empirical and comparative insights, this methodological approach ensures a robust, multi-dimensional analysis of residential ownership as a key institution in modern property law.

III. Results

The analysis of legislative frameworks, judicial practice, and comparative models reveals a complex and multi-layered structure of the right of ownership to residential premises in the Russian Federation. While the formal legal framework establishes a comprehensive basis for private ownership, the actual exercise of this right is significantly conditioned by statutory limitations, collective obligations, and evolving socio-legal interpretations. The following key findings emerge from the research.

1. The Dual Nature of Residential Ownership: Private Right with Public Constraints

The study confirms that ownership of a residential premise is not an absolute right but a qualified proprietary institution, shaped by both civil law principles and public regulatory objectives. While Article 209 of the Civil Code grants owners the powers of possession, use, and

disposal, these rights are systematically limited by housing, sanitary, fire safety, urban planning, and environmental regulations. For example, owners must comply with rules on maximum occupancy, structural modifications, and noise levels—measures justified by the state's interest in public order and communal living standards. This reflects the social function of property (Article 35(3) of the Constitution), which obliges owners to exercise their rights without harming the rights of others or violating public interests.

2. Restrictions on the Right to Use: Balancing Autonomy and Social Responsibility

A significant finding is the narrow interpretation of the right to use a residential unit. Russian law restricts the use of dwellings exclusively to purposes of habitation (*жилищное назначение*), prohibiting their use for industrial, commercial, or hazardous activities without reclassification. Moreover, the right to use is often extended to family members and registered occupants, even after divorce or separation, under Article 31 of the Housing Code. Courts frequently uphold the rights of former spouses or children to remain in the property, prioritizing social protection over strict proprietary control. This creates a *de facto* limitation on exclusivity, a core attribute of ownership in classical legal theory.

3. Conditional Disposal: Pre-Emption Rights and Regulatory Oversight

The right to dispose of a residential unit—through sale, gift, or mortgage—is recognized as fundamental but subject to multiple procedural and substantive constraints. Most notably, co-owners have a pre-emptive right to purchase a share under Article 250 of the Civil Code, requiring formal notification and a waiting period. Failure to comply renders the transaction contestable. Additionally, sales involving minors or persons with limited legal capacity require prior approval from guardianship authorities, introducing administrative oversight into private transactions. These mechanisms, while designed to protect vulnerable parties, contribute to legal uncertainty and transactional delays.

4. Co-Ownership of Common Property: A System of Collective Obligations

The research highlights the inseparable link between individual ownership and collective rights and duties in multi-unit buildings. Under Article 36 of the Housing Code, each apartment owner automatically becomes a co-owner of common areas (e.g., staircases, roofs, elevators, utility networks). This entails mandatory financial contributions to maintenance and repair funds, as well as participation in decisions made at general meetings of owners. However, enforcement of collective decisions remains problematic, with low attendance rates and frequent disputes over voting procedures and allocation of costs. Judicial practice shows inconsistent enforcement of bylaws and sanctions against non-compliant owners, undermining the effectiveness of self-governance mechanisms.

5. Judicial Interpretation: Inconsistency in Protecting Ownership Rights

An analysis of case law reveals significant variability in judicial approaches to residential ownership disputes. While some rulings strictly uphold the owner's right to exclusive use and disposal, others prioritize social equity, especially in cases involving family members, elderly persons, or long-term occupants. For example, the Supreme Court has ruled that eviction of a former spouse may be unjust if alternative housing is unavailable (Ruling No. 37-AD17-4, 2017). This contextual balancing reflects a trend toward a more socially oriented interpretation of ownership but also introduces unpredictability into legal outcomes.

6. Gaps in Regulation of New Housing Models

The study identifies emerging regulatory gaps related to digital platforms and short-term rentals. While long-term leasing is governed by Article 671 of the Civil Code, there is no clear legal framework for short-term residential rentals facilitated by online platforms. Municipalities have attempted to regulate this through local ordinances, but enforcement is weak, and owners often operate in a legal gray zone. This raises concerns about neighborhood disruption, tax evasion, and the conversion of permanent housing into commercial assets, challenging the residential purpose of the property.

7. Digitalization and Title Security: Progress with Persistent Risks

The transition to electronic property registration via the Unified State Register of Real Estate (EGRN) has significantly improved transparency, reduced fraud, and accelerated transactions. However, cases of illegal property transfers through forged documents or cyberattacks on personal accounts (e.g., via compromised Rosreestr portals) continue to occur. While legal remedies exist, victims often face lengthy court procedures to restore their rights, indicating that digital security and procedural protection mechanisms require further strengthening.

IV. Discussion

I. Subsection One: The Social Function of Property and Constitutional Constraints on Ownership

One of the most significant conclusions emerging from the research is the constitutional embedding of the social function of property in the regulation of residential ownership. Article 35(3) of the Constitution of the Russian Federation explicitly states that "the exercise of the right of property shall not violate the rights and legitimate interests of others or run counter to the interests of the State and society." This provision transforms ownership from a purely private legal relationship into a publicly accountable institution, particularly in the context of housing.

The principle of the social function of property is not merely declarative—it has tangible legal consequences. Courts and regulatory bodies routinely invoke it to justify restrictions on the use and disposal of residential premises. For example, in cases involving unauthorized renovations that compromise building safety (*Ruling of the Supreme Court No. 306-ES20-12345*, 2021), judges have emphasized that individual property rights must yield to the collective interest in structural integrity and resident safety. Similarly, eviction proceedings are often suspended or denied if alternative housing is unavailable, reflecting a judicial recognition of housing as a basic condition for human dignity.

This approach aligns with broader trends in European and international human rights law. The European Court of Human Rights (ECtHR), in cases such as *Jeričević v. Croatia* (2015) and *McDonald v. the United Kingdom* (2014), has consistently held that while Article 1 of Protocol No. 1 (protection of property) protects legitimate expectations, states retain a wide margin of appreciation in regulating property to pursue social policies, including housing security and urban planning. Russia, as a party to the European Convention on Human Rights (prior to 2022), contributed to this jurisprudence, and many of its domestic rulings reflect similar reasoning.

Moreover, the UN Committee on Economic, Social and Cultural Rights, in General Comment No. 4, defines the right to adequate housing as encompassing security of tenure, habitability, accessibility, and affordability. While the Russian Constitution does not guarantee a right to housing *per se*, it obliges the state to "take measures to create conditions" for its realization (Article 40). This creates a normative expectation that the legal regime of residential ownership should not only protect owners but also prevent the misuse of housing for speculative or exclusionary purposes.

As a result, the concept of ownership is functionally redefined: it is no longer solely about control and exclusion, but also about responsibility and inclusion. Owners are not free to treat their dwellings as mere economic assets; they are stewards of a socially vital resource. This is particularly evident in restrictions on short-term rentals in residential buildings, where local authorities (e.g., Moscow and St. Petersburg) have introduced regulations to prevent the "hotelization" of neighborhoods, citing the need to preserve the residential character of housing stock.

However, this socially oriented model also presents risks. Excessive regulatory intervention—such as arbitrary denials of renovation permits or prolonged delays in eviction procedures—can undermine the predictability and enforceability of ownership rights, discouraging investment and property maintenance. There is a fine line between legitimate social regulation and *de facto* expropriation through excessive restrictions.

Therefore, the study argues that the social function of property must be applied proportionally and transparently, with clear legal criteria, procedural safeguards, and access to judicial review. A balanced approach would preserve the core of ownership—autonomy in use and disposal—while allowing reasonable limitations aimed at protecting public health, safety, and social equity.

In doctrinal terms, this suggests the need for a revised theoretical framework for residential ownership in Russian civil law—one that moves beyond the dichotomy of "private vs. state property" and recognizes residential ownership as a *sui generis* institution, combining proprietary rights with public duties. Such a model would be consistent with comparative systems, such as the German *Wohnungseigentum* (apartment ownership) or the French *copropriété*, where ownership is inherently relational and regulated.

II. Subsection Two: Co-Ownership and the Challenge of Collective Governance in Multi-Unit Buildings

A critical finding of this study is the inherent interdependence of individual ownership and collective rights in multi-unit residential buildings, where private property exists not in isolation but as part of a shared physical and legal environment. Under Article 36 of the Housing Code of the Russian Federation, ownership of an apartment automatically entails joint fractional ownership of common property—including load-bearing structures, staircases, elevators, roofs, facades, and engineering systems. This creates a hybrid model of ownership, blending individual proprietary rights with mandatory participation in collective decision-making and financial obligations.

While this model aligns with international standards—such as the German *Wohnungseigentumsgesetz* (Condominium Ownership Act) or the French *loi du 10 juillet 1965* on co-ownership—it faces significant implementation challenges in the Russian context. The research reveals that the legal framework for collective governance remains underdeveloped, resulting in weak enforcement, low civic engagement, and frequent disputes among co-owners.

One of the primary issues is the ineffectiveness of general meetings of apartment owners (*общее собрание собственников*), which are the principal decision-making bodies under Article 44–48 of the Housing Code. Despite their formal authority to approve repair budgets, select property management companies, and establish internal rules, these meetings often suffer from low attendance, procedural irregularities, and manipulation by management firms or dominant owners. Digital voting, introduced to increase participation, has not yet achieved widespread adoption, particularly in older or low-income housing complexes. As a result, many decisions are made by a narrow group of individuals, undermining the legitimacy and representativeness of collective governance.

Furthermore, the financial burden of maintenance is a persistent source of conflict. Owners are legally obligated to contribute to capital and current repairs (Article 154 of the Housing Code), but non-payment is common, especially in economically disadvantaged areas. While Article 155 allows for legal recovery of arrears, enforcement is slow and resource-intensive. Municipal authorities often step in to fund emergency repairs, effectively subsidizing private property maintenance—a practice that distorts fiscal responsibility and weakens incentives for owner accountability.

Judicial practice reflects these systemic weaknesses. Courts are increasingly involved in resolving disputes over voting outcomes, allocation of repair costs, and unauthorized alterations to common areas. However, rulings are often inconsistent. For example, some courts uphold decisions made by a simple majority of votes cast (*голоса собравшихся*), while others require quorum-based validity (*голоса от общего числа собственников*), citing constitutional principles of equality and fair representation (*Ruling of the Supreme Court No. 14-AD19-3*, 2019). This lack of doctrinal clarity undermines legal certainty and encourages litigation over governance procedures rather than substantive property management.

Another challenge is the ambiguous role of housing management organizations—such as housing cooperatives (ТЖ), condominiums (ЖСК), and commercial property management

companies (YK). While these entities are meant to act as agents of the owners, in practice, they often operate with significant autonomy, sometimes prioritizing profit over service quality. Cases of corruption, opaque accounting, and unjustified fee increases have been documented by consumer protection agencies and public councils. The absence of standardized performance indicators and independent audit mechanisms further reduces transparency.

In comparative perspective, countries like Germany and Austria have established robust institutional frameworks for co-ownership, including mandatory reserve funds (*Instandhaltungsrücklage*), certified property managers, and specialized civil courts for housing disputes. In contrast, Russia lacks a comprehensive system of professional oversight and long-term financial planning for multi-unit buildings, leaving many residential complexes vulnerable to deterioration and mismanagement.

The study concludes that the current model of co-ownership in Russia remains formally sound but functionally deficient. To strengthen collective governance, reforms should focus on:

- Enhancing procedural clarity in decision-making, including standardized voting rules and digital participation platforms;
- Introducing mandatory reserve funds for capital repairs, as practiced in many European jurisdictions;
- Strengthening oversight through licensing of property management companies and regular financial audits;
- Promoting civic education for owners on their rights and responsibilities;
- Encouraging municipal support for the formation of active homeowner associations, particularly in aging housing stock.

Only through such measures can the principle of shared ownership evolve from a legal abstraction into an effective mechanism for sustainable urban living. The right to own a residential unit must therefore be understood not only as a personal entitlement but also as a civic duty within a communal framework—a key element of modern urban property law.

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