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THE OWNER OF PREMISES IN AN APARTMENT BUILDING: ISSUES OF CHOOSING AND IMPLEMENTING A MANAGEMENT METHOD

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Abstract. *The article analyzes the specifics of managing an apartment building in cases where all premises are owned by a single owner. The relevance of the study is determined by the absence of specific housing law provisions addressing this situation, which leads to legal uncertainty when choosing a management method. The purpose of the study is to identify gaps and conflicts in legal regulation and to substantiate possible approaches to their resolution. The research employs formal legal and systemic methods, as well as the analogy of law and the analogy of right. The author substantiates the conclusion that the rules governing direct management may be applied by analogy and identifies practical limitations related to information disclosure requirements in the State Information System for Housing and Utilities (GIS HUI).*

Key words: *apartment building, apartment building management, sole owner, common property, management methods, management company, direct management, housing legislation.*

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ЕДИНСТВЕННЫЙ СОБСТВЕННИК ПОМЕЩЕНИЙ В МНОГОКВАРТИРНОМ ДОМЕ: ПРОБЛЕМЫ ВЫБОРА И РЕАЛИЗАЦИИ СПОСОБА УПРАВЛЕНИЯ

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Аннотация. *В статье анализируются особенности управления многоквартирным домом при наличии единственного собственника всех помещений. Актуальность исследования обусловлена отсутствием специальных норм жилищного законодательства, учитывающих данную ситуацию, что приводит к правовой неопределённости при выборе способа управления. Цель работы заключается в выявлении пробелов и коллизий правового регулирования и обосновании возможных подходов к их разрешению. Используются формально-юридический и системный методы, а также аналогия закона и права. Обоснован вывод о допустимости применения по аналогии правил непосредственного управления и выявлены практические ограничения, связанные с требованиями раскрытия информации в ГИС ЖКХ.*

Ключевые слова: многоквартирный дом, управление многоквартирным домом, единственный собственник, общее имущество, способы управления, управляющая организация, непосредственное управление, жилищное законодательство.

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The right to housing is one of the most significant constitutional rights guaranteed to every person and citizen. At the same time, ensuring this right, in particular maintaining the proper condition of the housing stock and improving living conditions, is impossible without effective management [1; 3].

According to Part 2 of Article 161 of the Housing Code of the Russian Federation, owners of premises in an apartment building are obliged to choose one of the ways of managing the apartment building:

- 1) direct management by the owners of premises in an apartment building, the number of apartments in which does not exceed thirty;
- 2) management through a homeowners' association, a housing cooperative, or another specialized consumer cooperative;
- 3) management by a management company.

Management of an apartment building, according to Part 1 of the same article, is understood as ensuring favorable and safe living conditions for citizens, proper maintenance of common property in the apartment building, resolving issues of the use of such property, and the constant readiness of engineering communications and other equipment included in the common property of the owners of premises in the apartment building to provide utility services (if utility services are provided by a resource-supplying organization).

Article 36 of the Housing Code of the Russian Federation classifies as common property the premises in the building that are not parts of apartments and are intended to serve more than one premise in the building, including inter-apartment stair landings, staircases, elevators, elevator and other shafts, corridors, technical floors, attics, basements, and other similar objects.

Based on the above, the legislative regulation of Articles 36 and 161 of the Housing Code of the Russian Federation is aimed at ensuring favorable and safe living conditions for citizens in an apartment building, achieved through the proper maintenance of common property and shared engineering systems, and this activity constitutes management of the apartment building, the choice of which method is entrusted to the owners.

Understanding the law this way, management of an apartment building is a consequence of the existence of common property in such a building. As is correctly noted in the scientific literature, it is the presence of common property that forms the legal basis for the emergence of relations regarding the management of an apartment build-

ing and determines the need to choose the appropriate method of management [2; 5]. However, the existence of common property, according to paragraph 1 of Article 244 of the Civil Code, is possible only when the property is owned by two or more persons. In practice, situations are often encountered where all the premises in an apartment building belong to a single person. In this case, by virtue of the construction of Article 244 of the Civil Code of the Russian Federation, property intended to serve more than one premise in the building, which Article 36 of the Housing Code classifies as common shared property of two or more owners of premises in an apartment building, is the individual property of the sole owner of all premises in the apartment building. This position is consistent with judicial practice (for example, the decision of the Arbitration Court of the Republic of Crimea in case No. A83-13084/2022), as well as doctrinal conclusions, according to which the absence of multiple subjects excludes the very possibility of the existence of a common property regime [6].

In this regard, it appears that the article on the management of an apartment building and the obligation to choose such a management method is inapplicable in relation to the sole owner of all premises in an apartment building due to the absence of common property, in respect of which management is carried out, and the legislatively established obligation of the owner alone to bear the burden of maintaining their property (Article 210 of the Civil Code of the Russian Federation).

In the structure described above, management of an apartment building acts as a legal consequence of the existence of common property and multiple ownership. The absence of common shared property in the presence of a single owner, as shown above, calls into question the applicability of provisions on the mandatory choice of a management method. At the same time, scientific interest lies in studying the situation when the sole owner of all premises in an apartment building still faces the choice of a management method. Of particular scientific interest is a situation where such a building has more than 30 apartments, placing the owner in a position where direct management is legally impermissible.

Suppose an apartment building with more than 30 apartments is owned by an organization. Then, according to Part 2 of Article 161 of the Housing Code, it must choose between creating a homeowners' association (paragraph 2) and a management company (paragraph 3), since direct management is possible in a building with no more than 30 apartments.

Objectively, the creation of a homeowners' association by an organization that owns all the premises of a single apartment building looks somewhat strange, since such creation would be aimed solely at observing the principle of formalism and duplicating a legal entity. Why register a separate legal entity, maintain separate accounting records, and hire staff when this can be provided, for example, as a separate department within the existing organization. Such an approach generates elements of legal formalism and does not always correspond to economic and organizational feasibility [4; 7].

The choice of a management company is somewhat more interesting. According to Article 192 of the Housing Code, activities in the management of apartment buildings are carried out by management companies on the basis of a license to conduct business in the management of apartment buildings, issued by the state housing oversight authority based on a decision of the licensing commission of a constituent entity of the Russian Federation.

The law does not contain any prohibitions or restrictions limiting a management company in choosing which apartment building it can manage, nor prohibitions restricting owners of an apartment building in choosing a particular management company. It appears that, in this way, an organization holding a license to manage apartment buildings (a management company) has the right, based on this status, to manage an apartment building all of whose premises belong to that organization. Any other understanding of the law would contradict the principle of dispositiveness enshrined in Article 1 of the Civil Code of the Russian Federation.

However, a significant gap in legal regulation becomes apparent when implementing this model.

According to Part 2 of Article 192 of the Housing Code, management activities are understood as performing work and/or providing services in managing an apartment building based on a management contract. Article 162 of the Housing Code establishes requirements for the form and content of such a contract. At the same time, according to paragraph 1 of Article 420 of the Civil Code, a contract is recognized as an agreement between two or more persons on establishing, modifying, or terminating civil rights and obligations, which in turn excludes the possibility of concluding a contract by an organization with itself.

Furthermore, according to Part 10.1 of Article 161 of the Housing Code, a management company is obliged to ensure free access to information on the main indicators of its financial and economic activities, on the services provided, and on the work performed for the maintenance and repair of common property in the apartment building, on the procedure and conditions of their provision and performance, on their cost, and on the prices (tariffs) for utility services, by placing it in the system.

The procedure, composition, timing, and frequency of placement of information on apartment building management activities in the system are established by the federal executive body responsible for developing and implementing state policy and regulatory framework in the field of housing and communal services, unless another period for placing such information is established by federal law.

According to Part 18 of Article 7 of the Federal Law "On the State Information System of Housing and Utilities," persons providing management services for apartment buildings, under service agreements for maintenance and/or repair of common property, and for the provision of utility services, place in the system information stipulated in points 1, 2, 6, 7, 21–25, 28–33, 35–40 of Part 1 of Article 6 of this Federal Law.

Further developing the thesis that a management company and the sole owner of all premises in an apartment building may coincide in one person, since the law does not directly prohibit this, we encounter a factor that effectively prevents the existence of such legal relations. As noted earlier, management companies are obliged to report on their activities under the legislative principle of transparency by placing the information required by law in the GIS HUI system. Moreover, administrative liability is provided under Article 13.19.2 of the Code of Administrative Offenses for the absence or incompleteness of information in this system. The problem is that the law, in the content of information provided to GIS HUI by management companies according to Chapter XI of the Ministry of Construction of Russia Order of 07.02.2024 N 79/pr "On establishing the composition, timing, and frequency of information placement by information providers in the state information system of housing and utilities, mandatory placement of which is provided for by Federal Law of 21 July 2014 N 209-FZ," did not provide for a situation where the owner of all premises in an apartment building and the management company coincide in one person.

In this system, it is required to place the management contract for an apartment building, but for a management company coinciding with the sole owner of all premises, this is impossible, as noted earlier, since the conclusion of a contract requires the agreed will of two or more persons.

And, additionally, the following items are problematic:

- «Address of the citizen reception (customer service center)» – which clients, if the organization actually manages its own property?
- «Cost of services provided» – what services, if in theory it is impossible to provide services to oneself?
- «Deadline for presenting (issuing) payment documents for housing and/or utility charges» – from whom should the organization collect payment, from itself?
- «Acts of completed works» – self-signing of acts?

Thus, requirements regarding placing the management contract, service costs, payment documents, acts of completed work, and so on, become inapplicable in relations where there is no external service consumer.

Studying the above provisions of the Housing and Civil Codes in their interrelation, referring to the possibility of applying analogy of law and/or analogy of legal reasoning (Articles 7 HC RF, 6 CC RF), it appears that in the situation of management of an apartment building by the sole owner of all premises, either a restrictive approach to interpreting these norms should be applied, or rules regulating similar relations should be used.

For example, the legislator in Article 7 of the Federal Law “On the State Information System of Housing and Utilities” limited the list of management companies recognized as information providers in GIS HUI, namely, only those management companies operating under active management contracts. This is logical, as companies that have not yet found clients have nothing to report.

Interpreting the norm from this perspective, the obligation to provide information in GIS HUI by a management company that simultaneously is the sole owner of all premises in an apartment building is absent, since based on general principles and the meaning of civil law, a contract as a civil-law category cannot exist in such relations.

If we speak in terms of analogy, then in fact, management of an apartment building by the sole owner with a management license is closer to direct management than to management in the sense of paragraph 3 of Part 2 of Article 161 HC RF.

In this case, it seems logical for such an organization to fill out information in GIS HUI according to Chapter

XIV «Information to be placed in the system by legal entities and individual entrepreneurs who are sole owners of premises in an apartment building in cases where such owners have not chosen a method of managing the apartment building, or if the decision to choose a method of management has not been implemented, as well as in cases where such owners have chosen direct management of the apartment building» of the aforementioned Ministry of Construction Order.

However, this leads to another problem. The activity of such a management company will not be open, and for local government bodies, the apartment building managed by such a company will be considered as having not chosen a management method, which may ultimately lead to the local authority independently appointing a management company for such a building.

Moreover, one cannot exclude differences in approaches of state housing oversight authorities to interpreting the relevant norms, which potentially leads to the need for judicial protection of the sole owner’s right to choose a management model.

The issue of the existence of a sole owner in an apartment building regarding the management of such a building undoubtedly requires detailed doctrinal study and special legislative regulation. The absence of clear norms generates legal uncertainty and creates a risk of formalistic approaches by control bodies. It appears that the further development of housing legislation should aim at eliminating identified contradictions and forming a coherent model of managing apartment buildings with a sole owner, ensuring a balance of public and private interests.

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