

**IRKUTSK INSTITUTE (BRANCH) OF THE ALL-RUSSIAN  
STATE UNIVERSITY OF JUSTICE  
(RLA OF THE MINISTRY OF JUSTICE OF RUSSIA)**

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**Notarial protection of the rights and legitimate interests of participants in  
housing relations**

**5.1.3 Private Law (Civil Law) Sciences**

**Abstract of the thesis**  
for a degree of a Candidate of Juridical Sciences

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Irkutsk - 2023



**Relevance of the research problem.** In terms of the legal theory, the research problem is relevant due to the lack of unambiguous views on the issue of protection in private law in general and its individual forms in particular. Numerous discussions of the concept of protection of rights have not contributed to the development of a definition that would include all features of this concept in a consistent manner. It is required therefore to develop a holistic scientific concept of notarial protection based on the unified and consistent theory of protection of rights and interests in private law.

Under the current transformations that occur in the Russian Federation, the emerging role of social government policy, complicated civil law transactions, the growing number of legal acts regulating the relations between individuals and companies in the housing sector, and the lack of a holistic scientific concept of notarial protection cause violations of the rights and interests of participants in housing relations. There are no scientific approaches to housing rights and interests as notarial protection objects. The notarial procedures intended to protect the rights and interests of participants in housing relations have not been systematized. There are no scientific classifications of housing legal transactions which should be notarized. The influence of notarial protection of the subjective rights and legitimate interests of participants in housing relations has not been analyzed.

In terms of law enforcement, the traditional and generally recognized role of a notary in protecting the rights and interests of participants in civil legal relations has been reduced in the Russian housing sector. This is explained by the fact that the Russian housing legislation as an independent legislation branch has been created without the involvement of the notary, since it dealt only with the state distribution of public housing, and, according to the legislator, there was no need for additional protection of housing rights and interests. Transformations in the housing sector as a consequence of the total predominance of the right of private ownership of residential premises have not caused the need for the notary in housing legal relations. The legislator is reluctant to make decisions on the mandatory notarization of transactions with residential premises motivating this resistance by the high cost of notary services. This legislative policy continues to be pursued despite the disappointing statistics on frauds in the housing sector



and the growing number of litigation on the invalidation of transactions with residential premises and the requisition of residential premises from bona fide purchasers. At the same time, the role of a notary in protecting housing rights should be much broader and should be reduced to the certification of transactions that is traditional for civil law. At the notarization stage, the notary can prevent a significant number of conflicts between participants in housing relations, which is especially important in the context of fragmented housing legislation on certain issues.

The relevance of this study is determined the needs of participants in housing relations whose rights and interests have to be implemented and protected. It is necessary to improve both the housing and civil legislation on notarial protection of the subjective rights and legitimate interests and the law enforcement practice.

Without a scientific approach that can ensure the unhindered and effective notarial protection of the subjective rights and legitimate interests of participants in housing relations, there will be unfavorable trends associated with the violation of the fundamental constitutional right of citizens to housing that can cause social tension in society. Thus, the theoretical study of notarial protection of housing rights and legitimate interests seems to be relevant and timely.

**Elaboration of the research problem.** Doctrinal and practical issues on the notaries have been the focus of attention of legal scholars. For example, over the past five years, there were fourteen studies on notarial procedures presented in candidate and doctoral theses. Most of the theses were prepared in scientific specialties other than civil law.

General theoretical approaches to the forms of protection of subjective rights and interests are presented in the following studies: A.I. Bazilevich “Forms of protection of subjective civil rights” (2007); V.V. Bolgova “Forms of Protection of Subjective Right: Theoretical Problems” (2000). Civilistic problems of protecting civil rights and interests were studied in the doctoral thesis “Legal regulation of the protection of civil rights and legal interests” (2015) by A.V. Milkov.

The following theses also deal with notarial protection of the subjective rights and interests: V.V. Barankova “Problems of the notarial form of protection and protection of



law” (1997), I.A. Alferov “Notarial form of protection and protection of the right and legitimate interest” (2007), A.A. Shakhbazyan “Protection of civil rights in notarial proceedings” (2011), V.P. Ladygina “Notarial protection and protection of civil rights” (2017).

However, with the dynamically developing legislation there are and the lack of civil scientific approaches to the forms of protection in general and notarial protection in particular, many theoretical and practical issues have not been covered and solved.

With a certain number of theses on the notarization of real estate transactions (Maltseva S.V. “The role of the notary in the certification of real estate transactions” (2004), Tymchuk Yu.A. “Notarization of real estate transactions in international civil circulation” (2019)), there are no theses or monographs on the notarization of transactions with residual premises. P. V. Krashennnikov, who made a significant contribution to the study of real estate transactions, has not paid attention to the notarization of these transactions.

At the same time, the scope of notarial protection of housing rights and interests is reduced to the certification of transactions with residential premises. It should be noted that there are no fundamental civil theoretical publications on notarial protection of the rights and legitimate interests of participants in housing relations.

**Research object.** The research object of the present study is social relations associated with notarial protection of the rights and interests of participants in housing relations regulated by private law.

**Research subject.** The research subject of the present study is a set of legal norms of the civil, housing and notary legislation that determine grounds, conditions and legal consequences for the notarial form of protecting the rights and legitimate interests of participants in housing relations as well as the theoretical provisions and law enforcement (including judicial) practice.

**Research purpose.** The thesis aims to develop and substantiate a holistic civilistic concept of the notarial form of protecting the rights and legitimate interests of participants in housing relations. To achieve this research purpose, the following tasks were set:



- to identify features of notarial protection of rights and legitimate interests in private law and to provide a definition of notarial protection of rights and legitimate interests;

- to substantiate the specifics of housing rights and legitimate interests as objects of notarial protection;

- to evaluate the terminology of notarial procedures (certification, witnessing, evidentiary fact, etc.) and classify notarial procedures as measures taken to protect the rights and legitimate interests of participants in housing relations using the legally enshrined list of these procedures that has been significantly expanded;

- to identify existing classifications of transactions with residential premises and substantiate their legal significance in terms of notarial protection of the rights and legitimate interests;

- to identify features of notarial certification of transactions aimed at the emergence of ownership of residential premises;

- to identify features of notarial certification of transactions aimed at the emergence of limited ownership of residual premises;

- to develop amendments to the civil and housing legislation intended to improve notarial protection of the rights and legitimate interests of participants in housing relations.

**Theoretical framework.** The works by the following authors were used as the theoretical basis for the present study: I.A. Alferova, N.P. Aslanyan, V.V. Argunov, A.I. Bazilevich, E.Yu. Bakirova, Yu.G. Basin, R.S. Bevzenko, V.A. Belova, V.V. Bolgova, A.P. Vershinina, V.P. Volozhanina, B.M. Gongalo, T.I. Illarionova, A.R. Kanyukaeva, A.G. Karapetova, E.B. Kozlova, K.A. Korsika, O.A. Krasavchikova, P.V. Krashennnikova, D.I. Meyer, A.V. Milkov, N.V. Ostapyuk, M.N. Rakhvalova, M.A. Rozhkova, E.A. Sukhanova, S.I. Suslova, E.B. Tarbagaeva, Yu A. Tymchuk, D.A. Formakidova, D.M. Chechota, A.A. Shabkhazyan, A.M. Sherieva, L.V. Shchennikova, V.V. Yarkov, etc.

**Methodology.** The present study applied the general scientific dialectical method. When studying some issues, the general scientific methods of cognition such as analysis, synthesis, induction, and deduction were used to formulate key concepts and identify legal



patterns. Along with these methods, the general and specific scientific methods of cognition such as the formal logical method, the systemic method, and the comparative legal method were used to determine features of the notarial form of protecting rights and interests in private law, to formulate a definition of the notarial form of protection, to specify the conceptual and categorical apparatus, and to classify notarial procedures as measures aimed to protect the rights and legitimate interests of participants in housing relations.

To assess the need for amendments to the current legislation of the Russian Federation, the method of legal modeling was employed.

These methods assisted in identifying shortcomings of legal regulation, developing a holistic scientific concept of notarial protection of the rights and legitimate interests of participants in housing relations, and formulating proposals for improving the civil and housing legislation.

**Legal framework.** The legal framework of the present study is the Constitution of the Russian Federation, the Civil Code of the Russian Federation, the Housing Code of the Russian Federation, the Fundamentals of Legislation on Notaries, and some other legal acts of the Russian Federation

**Validity and reliability of the research results** are confirmed by the use of research methods that are in compliance with the research purpose and tasks set in the study. The scientific provisions, conclusions and recommendations formulated in the thesis are supported by convincing factual data based on the current judicial and notarial practice, modern scientific views and theories. The provisions formulated in the thesis, conclusions and practical recommendations were substantiated and logically follow from the purpose and objectives of the study.

**Scientific novelty.** For the first time in legal science, the study formulated and substantiated theoretical provisions which can become the basis for a holistic scientific concept of notarial protection of rights and legitimate interests in private law. Within this concept, the specifics of notarial protection of housing rights and its features in terms of the protecting and protected subjects were revealed; theoretically and practically



significant features of notarial protection were identified; notarial procedures were analyzed in terms of the theory of protection of rights and legitimate interests; the taxonomies of notarial procedures were developed; arguments in favor of the need to revise the terminology used in the field of notarial protection were provided; directions for improving the notarization of transactions aimed at the emergence of property rights and limited real rights to residential premises were identified.

The scientific novelty of the research is reflected in the following **main provisions submitted for defense**:

1. Notarial protection of the rights and legitimate interests in private law is a set of notary procedures established by law and initiated by an authorized person, which create a system determined by the nature of a relevant material legal relationship aimed at eliminating consequences of a violation of the right or legitimate interest, or threats (risks) to the right and legitimate interest or to their implementation.

2. In addition to the features of notarial protection as an independent form of protection of rights and legitimate interests presented in the legal literature, additional characteristics were identified:

special objects of protection, which are legitimate interests in the form of subjective rights and legitimate interests that exist outside of subjective rights;

special grounds for initiating the protection procedure: a) violation of the right or legitimate interest; b) the conflict between the subjects of private legal relationship and the conflict between the subject of private law and public authorities; c) the risk (threat) of a conflict and (or) the risk (threat) of obstacles in the exercise of the subjective right and legitimate interest.

3. The main interests of participants in housing relations that are subject to notarial protection are

- the interest in giving the transaction the form required by law or agreement between the parties;

- the interest in confirming the existence of the subjective right to residual premises;

- the interest in determining the content of the future limited real right to residual premises;

- the interest in determining the content of the future legal relationship between the participants in housing relations;

- the interest in preserving residential premises.

It was established that the objects of notarial protection are interrelated in the housing legal sector. It was substantiated that these interests can be part of the subjective rights to residual premises or exist before their emergence.

4. The notarial procedures as measures aimed to protect the rights and legitimate interests were classified following two criteria:

1) content:

a) certification of facts, rights and documents;

b) acceptance, fixation, issuance, transfer, and storage of information and documents, provision of information and documents to other bodies and organizations;

c) injunction (protection of hereditary property).

In contrast to the generally accepted taxonomy of notarial procedures, this classification is novel as

- it combines certifying procedures into one group regardless of what is to be certified: rights, facts or documents;

- it distinguishes between notarial certification of facts and notarial certification of documents;

- it changes the concept of injunctive notarial procedures;

- it abandons the terms “indisputable fact” and “indisputable right”, distinguishes between the notarial procedures that are evidenced and those that are certified, distinguishes between evidentiary and legal facts, singles out support actions.

2) the circle of persons whose rights and interests are protected:



a) certification of facts in the interests of a specific person (individual (personal) facts);

b) certification of facts in the interests of an indefinite circle of persons (collective facts).

The purpose of certifying individual facts is to protect the private interest, while the purpose of certifying collective facts is to protect the public interest.

5. The study developed taxonomies of transactions in the housing sector that affect the notarial form of protecting the rights and legitimate interests of participants in housing relations. These groups include:

- unilateral transactions and contracts. Notarized unilateral transactions in the housing sector were divided into transaction-consents, transaction-failures, transactions that empower and confirm them, and transactions causa mortis;

- transactions aimed at the emergence of ownership of residential premises and transactions aimed at the emergence of the right to use residential premises. The latter were divided into transactions that create obligatory rights to residential premises (lease agreements, gratuitous use agreements, rent agreement, etc.) and those that create limited real rights to residential premises (life estate agreement, testamentary refusal, etc.);

- transactions with residential premises as objects of civil and housing rights and transactions with property rights (shares in the ownership of residential premises).

6. The study revealed that the type of notarial certification (mandatory or voluntary) of transactions matters only for determining the notarial fee and should not be applied to civil law consequences. The study confirmed that both the law and the ability of the transaction to affect the rights and legitimate interests of third parties can prevent the parties to the housing relations from notarizing the transaction. Accordingly, the mandatory notarial form of unilateral transactions can be established by parties based on the rules of paragraph 3 of Article 308 of the Civil Code of the Russian Federation.

7. The study substantiated the need for distinguishing between residual premises as an object of civil rights and residual premises as an object of housing rights. The significance of this division for the notarial certification of transactions was identified. For the transaction with residential premises as an object of civil rights (an object of the



economic turnover), it is sufficient to establish a sign of its state registration, which indicates public recognition of compliance with all necessary requirements (compliance with the legal criterion). For the transaction with residential premises as an object of housing rights (an object of residence), it is necessary to establish the absence of contradictions between the legal criterion and the objective compliance of the residential premises with the characteristics specified in the law (actual criterion) in order to protect the rights of persons living in the residential premises or planning to live there.

8. To improve the efficiency of notarial protection of the rights and legitimate interests of legatees and heirs as participants in housing relations, the study substantiated the need

- to inform the testators about his/her obligation to include information on the future legatee (phone number, e-mail, address of residence and other data that allow informing the legatee about the testamentary disposition issued in his/her favor) in the testamentary disposition when certifying it;

- to inform the testator about his/her right to specify the part of the residual premises that the legatee is going to use. This proposal is based on the theoretical understanding of the object of a testamentary refusal: the object that will be encumbered with the right of the legatee and indicated as such by the registering body is residential premises (apartment, house or room); the specification of the part of this object in the testamentary disposition is a provision of the agreement on the use of residential premises concluded between the heir and the legatee;

- to inform the testator about his/her right to distribute maintenance and repair duties between the beneficiary and the heir;

- to legislate the ability of concluding an agreement on the use of residual premises between the heir and the legatee, the terms of which can be determined by a will or agreed by the parties.

9. To improve the efficiency of notarial protection of the rights and interests of rent recipients and payers as participants in housing relations, the study substantiated the need

- 1) to legally exclude the provision of other residential premises for living exclusively in relation to residential premises owned by the rent payer on the basis of



ownership. The life-long maintenance agreement with a dependent can establish the obligations to provide residual premises under the commercial rental agreement, the specialized rental agreement, or the loan agreement; however, the right to reside there will arise on legal grounds (a commercial lease agreement, a specialized lease agreement, etc.) other than Article 34 of the Housing Code of the Russian Federation.

2) to legislate the provisions on living in the residential premises of the rent recipient and the rent payer based on the following approaches:

- both the owner and the rent recipient have independent rights in relation to the residential premises, and in the absence of special provisions in the rental agreement regulating the right of the owner to move in and use the residential premises for living, it is impossible to deprive the owner of these right;

- the fact that in the rental agreement the entire residential premises (not part of them) are provided to the rent recipient does not indicate the intention of the rent payer (owner) to refuse to exercise the right to reside in the residential premises;

- in the life maintenance agreement with a dependent, the rent payer and the rent recipient may restrict the owner's right to own and use the residential premises, specifying actions that the owner is not entitled to perform in relation to the residential premises.

3) to take into account the balance of rights and interests of the participants in housing relations arising from the lifelong maintenance agreement with a dependent. The shift of the balance of rights and interests of the parties to the housing legal relationship arising from this agreement towards the protection of the rent recipient's rights was justified. This approach does not take into account the risky nature of this agreement, the possible transfer of residential premises for rent payment for a fee, which requires the notary to explain possible negative consequences both for the rent recipient and the rent payer. It was substantiated that the lack of an unambiguous solution to the collision of the rights and interests of the rent payer and the rent recipient in the legislation and judicial practice enhances the role of agreements in resolving disputes.

**Theoretical significance.** The conclusions drawn and proposals formulated in this study can become the basis for developing a holistic scientific concept of notarial protection of the rights and legitimate interests of participants in housing relations. They



can supplement existing doctrines (theories) on legal facts, civil relations, protection of private rights and be used in the development of the issues of individual measures of notarial protection of subjective private rights and legitimate interests.

**Practical significance.** The proposals, conclusions and recommendations formulated in this thesis can be used in future studies on the same issue and in law enforcement practice of notaries aimed to protect housing rights and legitimate interests. The research results can be also used by courts in resolving disputes regarding notarial actions or evaluating documents certified or issued by a notary. The results can be the theoretical basis for improving civil, housing and notaries legislation.

**Approbation of the research results and completeness of presentation of the dissertation materials in the works published by the applicant.** The work was performed at the Department of Civil and Business Law of Irkutsk Institute (branch) of the All-Russian State University of Justice (RLA of the Ministry of Justice of Russia). The thesis was discussed at the department meeting, where it was reviewed. The theoretical and practical provisions of the thesis were reflected in the author's scientific publications and used in author's notary activities. The main ideas and theoretical provisions of the thesis were reported at scientific and practical conferences, including the sixth scientific and practical conference "Problems of state registration of real estate and cadastral registration" (December 7, 2018, Irkutsk Institute (branch) of ARSUJ (RLA of the Ministry of Justice of Russia), the seventh international scientific and practical conference "Problems of modern legislation in Russia and foreign countries" (October 5, 2018 Irkutsk Institute (branch) of ARSUJ (RLA), the eighth international scientific and practical conference "Modern trends in the development of private law, enforcement proceedings and methods of legal protection" (November 25, 2022 St. Petersburg Institute (branch) of ARSUJU (RLA of the Ministry of Justice of Russia)).

**Structure of the thesis.** The structure of the thesis is in compliance with the research purpose and objectives and includes the following sections: Introduction, three chapters consisting of six paragraphs, Conclusion and References.

**Introduction** substantiates the relevance of the research topic, describes its elaboration in legal science, formulates the research purpose and objectives, describes the



research object and subject, determines the theoretical and methodological frameworks of the research, describes the scientific novelty, theoretical and practical significance of the thesis and formulates the main provisions submitted for defense.

**Chapter 1** “The concept of notarial protection of the rights and legitimate interests of participants in housing relations” deals with the notarial form of protection of rights and legitimate interests in private law, provides a definition of the notarial form of protection, analyzes housing rights and legitimate interests as objects of notarial protection.

**Chapter 2** “Notarial procedures as measures aimed to protect the rights and legitimate interests of participants in housing relations” deals with the system of notarial measures taken to protect the rights and legitimate interests of participants in housing relations, classifies transactions in the housing legal area and identifies their significance in terms of notarial protection of the housing rights and legitimate interests.

**Chapter 3** “Notarial certification procedures as measures taken to protect the rights and legitimate interests of participants in housing relations” deals with notarial procedures aimed at the emergence of ownership of residential premises and limited real rights to residential premises.

The main conclusions are drawn in the **Conclusion** section.

**List of author’s publications.** The main provisions of the thesis are reflected in nine research articles. Five of these articles were published in journals included in the List of publications approved by the RANEPА Academic Council under the President of the Russian Federation and recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation:

1. Izmailova E. V. About notarial certification of facts: on the content and terminology / E. V. Izmailova // Notary. - 2019. - No. 6. - P. 6–9.
2. Izmailova E. V. On the classification of notarial acts in terms of the civil doctrine of protection of civil rights and interests / E. V. Izmailova // Siberian Legal Bulletin. - 2019. - No. 4. – P. 53–58.



3. Izmailova E. V. Notarial actions for the acceptance, fixation, issuance, and transfer of information and documents, and their provision to other bodies and organizations / E. V. Izmailova // Notary. – 2020. – No. 2. – P. 8–11.

4. Izmailova E. V. Housing rights and interests of citizens and their notarial protection / E. V. Izmailova // Prologue: Law Journal. – 2022. – No. 1. – P. 47–56.

5. Izmailova E. V. Notarial protection of the right of residence of the rent recipient // Family and housing law. – 2023. – No. 1.