

**FEDERAL STATE BUDGET EDUCATIONAL INSTITUTION OF  
HIGHER EDUCATION "IRKUTSK STATE UNIVERSITY"**

*As a manuscript*

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**DECISIONS OF MEETINGS OF OWNERS IN THE RIGHT OF  
COMMON SHARE PROPERTY IN RUSSIAN CIVIL LAW**

**5.1.3 - Private law (civilistic) sciences**

**Dissertation abstract**

**for a degree candidate of legal sciences**

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**Irkutsk - 2023**

The relevance of the dissertation research topic is manifested in four interrelated aspects.

*Socio-economical aspect.* The right of common shared ownership is a traditional and historically established institution of civil law, which is widely used in the field of property relations. However, there is no unified mechanism of interaction between co-owners, which would be inherent in all types of common shared property rights, and the existing one does not contribute to the effective, high-quality and timely management of common property.

The Civil Code of the Russian Federation provides that any decisions regarding the possession, use, disposal of common property are taken by the owners unanimously. An increase in the number of co-owners to tens and hundreds jeopardizes the very possibility of making any legally significant decisions regarding common property. By virtue of the essence of property rights, the mechanism for developing a common will of co-owners should correlate with the principle of long-term cooperation.

Flexible and effective structures are needed to satisfy the interests of both each individual owner of common property and the entire civil law community of co-owners as a whole. In this regard, it is permissible to use the institution of decisions of meetings, which provides the possibility of making decisions by the community on the basis of the majority principle, in relation to the decisions of the co-owners of any objects of the right of common shared ownership. Such an approach would be consistent with the position of the legislator, who applies the rules on the decisions of meetings for certain types of civil law communities of co-owners.

*Legal aspect.* The institution of the decision of the assembly was first legally enshrined in Russian civil law in 2013. Prior to the entry into force of these changes, the decisions of the meetings existed and were legally regulated in separate federal laws, mainly related to the adoption of decisions by the management bodies of legal entities, however, after the amendments were made to the Civil Code of the Russian Federation, the scope of the decisions of the meetings expanded significantly.

At the same time, there is still no legal definition of the term “meeting decision” in the current legislation. The legislator has not defined the signs that allow qualifying certain legal facts as decisions of meetings, reflecting their specificity and allowing to determine their essence, in order, firstly, to apply the rules on decisions of meetings to any decisions of co-owners in the right of common shared ownership, secondly, to apply the norms on transactions in a subsidiary way (in case the decisions of the meetings are referred to as transactions).

Legislation on common shared ownership is multi-layered and fragmented (Civil Code of the Russian Federation, Housing Code of the Russian Federation, Land Code of the Russian Federation, separate federal laws), which does not contribute to the uniformity of the application of legislation. The mentioned normative-legal acts lay down different basic principles and use heterogeneous approaches regarding objects classified as a single group of real estate. The discrepancy between general and special legislation, as well as special legal acts, the lack of uniformity in the regulation of relations related to decision-making in the right of common shared ownership of different types, contradicts the principle of systematic legislation, makes it illogical and inconsistent.

*Doctrinal aspect.* In scientific doctrine, there has not yet been a clear understanding of the legal nature of the decision of the meeting. Insufficient knowledge of this structure, including taking into account the experience of foreign jurisdictions, the presence of numerous but non-uniform judicial practice on disputes related to the decision-making of meetings by participants in civil law communities, has given rise to a significant number of theoretical and practical problems. Questions remain unclear regarding the definition of the legal nature of decisions of meetings, their qualifying features, their place in the system of legal facts; the question of the possibility of applying the meeting decision model to all decisions made by co-owners in the right of common shared ownership is open, which contributes to an unjustifiably differentiated approach to resolving disputes between co-owners. In domestic civil law, the issue of classifying the decisions of meetings has not been sufficiently worked out.

*Law enforcement aspect.* Insufficient theoretical development of provisions on decisions of meetings leads to fragmentation and instability of law enforcement. The courts are faced with the problem of qualifying the decisions of meetings as such: determining the legal nature of the decisions of meetings is of great practical importance, since this predetermines the subjective rights and obligations of members of the civil law community.

Even more important is the question of whether the agreements adopted by the co-owners are the decisions of the meetings, since the legitimacy of the decisions taken, their implementation, protection of the rights of the community and co-owners, both agreeing and disagreeing with the general decision, depend on this. For example, depending on whether the decisions of co-owners are recognized as decisions of meetings or not, the issue of the admissibility of making such decisions on the principle of subordination of the dissenting minority to the majority will be decided, applying to such decisions the norms of Chapter 9.1 of the Civil Code of the Russian Federation on decisions of meetings and Chapter 9 "Transactions".

The courts do not have a unified approach to determining the share in order to calculate the share of co-owners when voting at meetings, distributing the burden of maintaining common property. A large number of disputes related to the competence of co-owners to make certain decisions, the participation of non-owners in general meetings, the possibility of challenging the decisions of co-owners and the grounds for invalidating them, indicates the need to resolve the tasks set by practice. Due to the lack of a uniform approach in the legal regulation of the decisions of co-owners in civil, housing, land legislation, the courts resolve similar disputes in different ways in relation to different objects of common property.

All of the above determines the relevance, timeliness and relevance of the topic of this dissertation research.

**The degree of scientific development of the topic of scientific research.** Certain aspects related to the decisions of meetings in the system of legal facts are studied in the works of V. K. Andreev, Yu. G. Stepanov, V. V. Gruzdev, V. V. Dolinskaya, N. N. Pakhomova, O. M. Rodionova and others. The works of V. V.



Rovny, A. E. Kolieva , T. S. Boyko, V. A. Syrbo are devoted to such a sign of meeting decisions as fiduciary relations between participants . Decisions of meetings in the right of common shared ownership have been studied, including by the method of comparative analysis, in the works of U. B. Filatova, S. N. Kasatkin, E. S. Korchagina, O. M. Rodionova and others. common property in apartment buildings, methods of managing an apartment building are found in L. S. Kolpakova, L. Z. Gazizullina , O. G. Kiryakova , S. E. Masley , S. I. Suslova and others; in the field of agricultural land management and decision-making by the co-owners of such property - from S. A. Lipsky, S. N. Lukyanchikova, V. A. Maiboroda and others.

Monographic studies on the issue of decisions of meetings in the system of legal facts are presented in the works of S. S. Krivusheva "Decisions of meetings as legal facts in Russian civil law" (Moscow, 2019), D. I. Stepanov "Invalidity of corporate decisions: articles on problematic issues "(Moscow, 2021), A. A. Kuznetsova "Reorganization of business entities: civil law ways to protect the rights and legitimate interests of participants and creditors" (Moscow, 2021). Chapters are devoted to the decisions of the meetings in article-by-article comments to the Civil Code of the Russian Federation edited by P. V. Krashenninnikov, B. M. Gongalo , in the monographs of V. A. Laptev "Corporate Law: Legal Organization of Corporate Systems" (Moscow, 2019), N. N. Pakhomova "Fundamentals of the theory of corporate relations" (Yekaterinburg, 2004).

However, a comprehensive study of the decisions of meetings of co-owners in the right of common shared ownership, taking into account the objects of the right of common shared ownership, was not carried out. Starting from 2014, the decisions of the meetings were considered in some dissertations, but only within the specific limits of the study. The foregoing allows us to state that in Russian civil law there is not enough scientific materials that comprehensively consider the decisions of meetings of co-owners, take into account the latest changes in legal regulation and contain an analysis of current law enforcement practice.

**The object** of the study is the legal relations caused by the decision-making by the co-owners in the right of common shared ownership, including the legal

relations arising in the process of convening, preparing and holding a meeting of co-owners, as well as in the event that the decision of the meeting is recognized as invalid.

**The subject** of the study is the current civil legislation of the Russian Federation and a number of foreign jurisdictions, judicial law enforcement practice, doctrine.

**The purpose** of this dissertation research is to form a scientific understanding of the decisions of meetings of co-owners based on the study of legal norms, judicial practice and doctrine. Achieving this goal determined **the following tasks** :

- to establish the place of decisions of meetings in the system of legal facts, taking into account a systematic analysis of approaches to determining the legal nature of decisions of meetings in domestic civil law;
- to identify the features and constitutive features of the decisions of the meetings that determine their essence as a multilateral transaction;
- to determine the main classifications of decisions of meetings of co-owners in order to better understand the content of this institution;
- to identify the features of making decisions of meetings by co-owners in the right of common shared ownership;
- identify and analyze the manifestations of fiduciary in the decisions of meetings of co-owners as a sign of a multilateral transaction;
- determine the meaning and investigate the implementation of the principle of majority and unanimity in the decision-making of meetings by co-owners;
- to study the legal nature of the general meeting of co-owners of the common property of an apartment building;
- consider the features of decision-making by meetings of co-owners in relation to such an object of the right of common shared ownership as the common property of an apartment building;
- to identify the features of invalidating the decisions of meetings of co-owners of the common property of an apartment building;

- to consider the features of the decisions of meetings of co-owners of land plots, including agricultural land plots, to identify the specifics of emerging legal problems, to analyze the approaches of the courts and recommendations of state bodies in order to practically solve the problems of regulating the legal relations under study, to develop their own ways to solve them.

**The theoretical basis** of this work is the works of such authors as T. E. Abova, S. S. Alekseev, V. A. Belov, Yu. F. Besspalov, T. V. Bogacheva, T. S. Boiko, V. V. Vitryansky, L. Z. Gazizullina, B. M. Gongalo, V. V. Gruzdev, S. P. Grishaev, V. V. Dolinskaya, A. V. Egorov, O. S. Ioffe, O. G. Kiryakova, E. B. Kozlova, O. A. Krasavchikov, P. V. Krashenninikov, A. A. Kuznetsov, S. A. Lipski, V. A. Maiboroda, V. A. Mosin, D. V. Novak, N. N. Pakhomova, K. P. Pobedonostsev, O. N. Sadikov, A. P. Sergeev, O. A. Serova, Yu. P. Svit, D. I. Stepanov, S. I. Suslova, U. B. Filatova, S. Yu. Filippova, M. A. Tserkovnikov, G. F. Shershenevich, and others.

As for the works of foreign authors, it should be noted the studies of such scientists as A. C. Freeman, M. Conaglen, A. Dignam, J. Lowry, J. W. Singer, R. Kraakman, J. Armour, P. Davies, L. Enriques, H. Haasmann, G. Hertig, K. Hopt, Hideki Kanta, M. Pargendler, W.-G. Ringe, E. Rock and etc.

**The methodological basis** of the dissertation work is the dialectical method, which makes it possible to analyze the decisions of meetings made by participants in various civil law communities in relation to differentiated objects of common property, to identify the specifics of the relations of co-owners when they make decisions.

The work used formal-logical methods, such as: induction and deduction, analysis and synthesis, comparison and analogy. A retrospective analysis of Russian and foreign legislation on decisions of meetings, as well as scientific views regarding the formation of a common will, made it possible to identify the stages in the formation of doctrinal approaches to the definition of the concept of a decision of a meeting, the features of the legal regulation of decisions of meetings of co-owners in the right of common shared ownership. The method of systematic research made

it possible to determine the constitutive features of the decisions of the meetings, to develop criteria for their systematization and classification, as well as to give a legal assessment of the problems that arise when decisions are made by the co-owners of common property.

The definition of the concept of the decision of the meeting is given using the method of technical and legal analysis. The current legislation and judicial practice are analyzed using the formal legal method. The comparative legal method of research made it possible to comprehensively study fiduciary as a sign of the decision of the meeting as a multilateral transaction.

**The normative basis of the study** are The Constitution of the Russian Federation, the Civil Code of the Russian Federation (as amended on April 14, 2023), the Housing Code of the Russian Federation (as amended on April 28, 2023), the Land Code of the Russian Federation (as amended on April 28, 2023), other federal laws and other regulatory legal acts of the Russian Federation, as well as some provisions of the civil law of France, Germany, Austria, Italy, England, Japan.

**The validity and reliability of the research results** are confirmed by the use of scientific papers and publications of Russian and foreign scientists in the dissertation research, a comparative analysis of a significant amount of the legal framework and judicial practice on the chosen topic, and the use of methods of scientific knowledge corresponding to the dissertation work.

**The scientific novelty** of the work is determined both by the statement of the stated problem, and by the approach to its solution through the determination of the qualifying signs of the decision of the meeting and, as a result, the establishment of the legal nature of the decisions of the meetings of co-owners. An attempt was made to systematically study the decision of the meeting of one of the significant groups of civil law communities named in paragraph 2 of Article 181.1 of the Code - co-owners in the right of common shared ownership, taking into account the current state of legislation, doctrine and judicial practice.

New arguments are put forward in favor of the theoretical provisions already expressed in the doctrine on the issue of the transactional nature of the decisions of



the meetings. In the first, an integrated approach through the definition of the main features of a multilateral transaction, such as: the need to coordinate expressions of will - reaching an agreement, the presence of a single common goal; identity and unidirectionality of the interests of the participants of the civil law community, property-organizational nature, fiduciary, it is established that the decisions of the meetings fully possess the entire set of features mentioned above, and therefore are multilateral transactions.

Taking into account the study of fiduciary relations in the doctrine and law of foreign jurisdictions, a fundamentally new position is substantiated, according to which the decisions of the meetings of co-owners (in which there may be no personal trust relationship in principle) have a sign of fiduciary due to being tied to common property, which obliges the co-owners to comply with the standards of conscientious fiduciary behavior.

For the first time, doctrinal approaches to the definition of the concept of a decision of a meeting in the narrow corporate and broad senses are systematized and generalized, depending on whether scientists considered the decisions of meetings only in relation to legal entities or in civil law communities as a whole. Criteria are identified that allow classifying the decisions of meetings and for the first time all the decisions concerning the decisions of the meetings of co-owners of the classification are summarized.

Scientific novelty finds direct expression in the following **basic provisions submitted for defense:**

1. It is substantiated that the rules of Chapter 9.1 of the Civil Code of the Russian Federation can be extended not only to those decisions with which the law associates civil law consequences, but also to those decisions whose civil law consequences follow from the general principles and meaning of civil law, including agreements of co-owners in the right of common shared ownership. .

This approach will fill the gap in legal regulation, provide civil law communities with the opportunity to use the norms of Chapter 9.1 of the Civil Code

of the Russian Federation to regulate the process of making, formalizing decisions and giving them legal status in the absence of special legislation.

2. The decision of the meeting is a multilateral transaction and corresponds to all its features, which are: the need to coordinate expressions of will - reaching an agreement; the presence of a single common goal; identity and unidirectionality of interests of the participants of the civil law community; organizational and property character; fiduciary.

3. Fiduciarity is understood as a property of a multilateral transaction, the essence of which lies in the presence between its parties of special relations, due to the unity of interests due to commonality, aimed at achieving a common goal and characterized in connection with the presence of additional rights and obligations of participants in such relations.

Community can be determined by common property (in meetings of co-owners), common debtor (in meetings of creditors), participation in one company (in general meetings of legal entities), common interest.

An indicator of the lack of fiduciary can be considered a deviation from the common goal, making a decision contrary to the common interests. In this understanding, fiduciary is inherent both in communities formed on a voluntary basis, in which it manifests itself in the most obvious way in its classical sense (when the basis of such trust lies in the plane of personal trusting relationships), and in forced civil law communities (when trust is conditioned by a common goal). and common interests).

Fiduciary is characterized by:

(a) The presence of special moral and ethical "fiduciary" standards of behavior, not directly regulated by legal norms, but due to the need to act in the general, not personal interests;

(b) Guaranteed deterrent measures of non-infringement of the right as a preventive nature, aimed at preventing a situation of infringement ( ex ante ), and of a protective nature ( ex post ).

4. The author's classification of decisions of meetings of co-owners in the right of common shared ownership is proposed, depending on the purpose of the decisions made and the features of the adoption:

- administrative decisions made in relation to common property are connected with the constitutive basis of the civil law community of co-owners and affect the basis of the community, and therefore the unanimity of co-owners in decision-making is required;
- managerial (organizational) decisions made regarding the organization of the activities of the civil law community of co-owners;
- competent decisions that give other persons who are not co-owners certain competence or powers in relation to common property;
- procedural decisions aimed at establishing a certain order, procedure, course of the meeting.

The different purpose of adoption and the degree of influence on the community and the fate of common property predetermine different requirements for the quorum necessary for their adoption.

Only administrative decisions, due to their special significance, require unanimity. Management and competence decisions are made by a qualified majority of votes. A simple majority of votes is sufficient for procedural decisions.

5. It has been proven that the general meeting of owners of premises in an apartment building is not a governing body of an apartment building, but is a civil law community of owners of premises in an apartment building, the participants of which are authorized to make decisions within their competence that have legal consequences for all owners of an apartment building, including for those who did not take part in the voting, voted against the adoption of the relevant decisions or abstained.

6. The decision of the meeting of owners of common property in an apartment building is a legal fact in housing law, which has the following features:

- and the initiator of the meeting can be not only a member of such a community, but also another person;

- in some cases, the obligation of owners to hold a meeting and / or make decisions is established;

- the right to participate in the general meeting of owners and make decisions, in addition to the owners - members of the civil law community, is vested in persons who do not have the status of an owner;

- in addition to the co-owners themselves, other subjects of law - specialized bodies - are vested with the right to challenge the decisions of the meetings;

- increased requirements were established for the decisions of meetings, their convening, holding, fixing: a ban on making decisions on issues not included in the agenda, the exhaustive nature of the competence of the meeting, the presence of strict regulated requirements for the minutes of the meeting, the violation of which may lead to its invalidity.

7 . Decisions made by the owners of the right of common shared ownership of a land plot from agricultural land are decisions of meetings, regardless of the number of co-owners.

**The theoretical significance** of the dissertation work lies in the possibility of using the author's proposals and conclusions for further scientific research of decisions of meetings in general and decisions of meetings of co-owners in the right of common shared ownership. The provisions proposed by the author, based on a comprehensive analysis of Russian and foreign legislation and law enforcement practice, are able to enrich the doctrine of legal facts with new approaches and content; are aimed at expanding scientific views on the legal nature of the decisions of meetings in order to develop a general theory of corporate law, as well as on some aspects of the law of common shared ownership.

**The practical significance of the dissertation research** lies in the possibility of applying the recommendations and proposals formulated by the author for further improvement of legal regulation in the areas of civil, housing, land legislation and bankruptcy law. The author's conclusions can be applied in law enforcement practice in the formation of a legal position on disputes related to challenging the decisions of meetings, as well as in the preparation, convening, holding general meetings of



co-owners of common property. The dissertation research can become the basis for future research and be used in the process of teaching civil law, business law, housing law, land law courses.

**Approbation of the research results** is determined by the fact that dissertation was performed at the Department of Civil Law of the Law Institute of the Federal State Budgetary Educational Institution of Higher Education "Irkutsk State University". The dissertation was discussed at the meeting of the department. The main ideas and theoretical provisions of the dissertation research made up the content of the author's reports at a number of scientific and practical conferences, including: VI International scientific and practical conference "Modern problems of Russia and foreign countries" (December 8, 2017, Irkutsk Institute (branch) VSUYU ( RPA of Russia)), All-Russian scientific and practical conference "Modern problems of lawmaking and law enforcement" (March 23, 2018, Irkutsk), VII International scientific and practical conference "Problems of modern legislation in Russia and foreign countries" (October 5, 2018 , Irkutsk Institute (branch) of VGUYu (RPA of Russia)), VIII International Scientific and Practical Conference "Problems of Modern Legislation in Russia and Foreign Countries" ( September 27, 2019, Irkutsk Institute (branch) of VGUYu (RPA of Russia)), X Annual International Scientific and Practical Conference "Protection of Private Rights: Problems of Theory and Practice" (September 23-24, 2021, Baikal Law Forum, Baikal State University, Irkutsk) , IX International scientific and practical conference "Problems of modern legislation in Russia and foreign countries" (October 1, 2021, Irkutsk Institute (branch) of VSUYU (RPA of Russia)), Interuniversity scientific student conference "Actual problems of lawmaking and law enforcement in the Russian Federation" (9 April 2022, Irkutsk State University, Irkutsk), V International Scientific and Practical Conference "Modern Problems and Prospects for the Development of Private Law and Public Law Regulation" (April 22, 2022, Institute of Law, Bashkir State University, Moscow). Ufa), All-Russian Student Scientific Conference "Modern Jurisprudence: Legal Model and Law Enforcement Practice" (08 April 2023, Irkutsk State University, Irkutsk).

**The structure of the dissertation work** is determined by the purpose and objectives of the study and includes an introduction, three chapters, consisting of ten subsections, a conclusion and a list of references. The first chapter, which contains three subsections, considers aspects of the legal nature of the decisions of the meetings as a whole, the features of the decisions of the meetings as a multilateral transaction and their classification. The second chapter, which also contains three subsections, is devoted to the peculiarities of decisions of meetings of co-owners in the right of common shared ownership, including the manifestation of a sign of fiduciary in decisions of meetings, an analysis of the principle of majority and unanimity in making decisions of meetings of owners. The third chapter deals with the types of decisions of meetings of co-owners in the right of common shared ownership, including decisions of meetings of co-owners of common property in an apartment building and co-owners of land.

**Enumeration of the publications of the author.** The main provisions and conclusions of the study were tested in fifteen works of the author, five of which are in peer-reviewed scientific publications recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation:


1. Kovalenko Yu. N. Agreements of co-owners in the right of common shared ownership: legal qualification / Yu. N. Kovalenko // Society: politics, economics, law. - 2018. - No. 9. - P. 74-78.

2. Kovalenko Yu. N. Fiduciary as a sign of the decision of the meeting / Yu. N. Kovalenko // Academic legal journal of the Irkutsk Institute of Legislation and Legal Information named after M. M. Speransky. - 2018. - No. 4 (74). - S. 44-50.

3. Kovalenko Yu. N. Development of alternative forms of holding general meetings of co-owners / Yu. N. Kovalenko // Civil law. - 2022. - No. 1. - P. 30-33.

4. Kovalenko Yu. N. The share of the co-owner of the common property of an apartment building: approaches to its definition / Yu. N. Kovalenko // World judge. - 2022. - No. 3. - P. 30-34.

5. Kovalenko Yu. N. Problems of determining the share in the right of common shared ownership of common property in an apartment building / Yu. N. Kovalenko // Siberian Legal Bulletin. - 2022. - No. 4 (99). - S. 42-50.



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