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**CIVIL-LEGAL REGULATION OF RELATIONS ARISING FROM
ESCROW**

Specialisation 5.1.3. Private law (civil) sciences

DISSERTATION ABSTRACT

for the degree of Candidate of Legal Sciences

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Relevance of the research topic. The relevance of the research topic is based on a novelty of the institution of escrow for the Russian legal order, its limited application in a practical plane (mainly in the field of the real estate), the existence of scientific and theoretical contradictions, inherent in the understanding of the domestic category of escrow, the potential appropriateness of the institution as an instrument for investors.

Over more than a decade of the application of escrow arrangements in Russian law, specific legislation governing the relevant legal relationships has emerged, alongside a body of law-enforcement practice that highlights both the merits and prospects of this legal mechanism and the issues requiring resolution.

Although escrow is a legal construct borrowed from common law — previously unknown to domestic legislation and lacking direct analogues in Russian law at any stage of its development — no significant debate has emerged within Russian legal doctrine regarding the dogmatic characterization of this institution in the context of domestic legal traditions. The legal nature and specific application of escrow, as well as the legal status of the parties involved in escrow arrangements, are not self-evident within the Russian legal system, and the scarcity of relevant scholarly research exacerbates this gap in understanding.

Currently, issues related to the institution of escrow, in particular the definition of its legal nature, its distinction from related contractual structures, its relationship to professional management of another's property, etc., as well as the legal status of escrow agents (requirements for escrow agents, liability, and legal regulation of their activities), are not sufficiently developed at a theoretical level. Regulating the legal status of attorneys and notaries acting as escrow agents, as individuals with a special status, deserves special attention, as comprehensive research on this topic is lacking.

Escrow in the construction sector requires further legislative regulation. To this end, a theoretical justification for the feasibility or impossibility of transitioning to a phased escrow account opening model is needed, as well as an analysis of the legislative changes implemented in the construction sector.

The combination of these factors demonstrates the need for further theoretical development of escrow. Thus, this study represents an important contribution to the development of civil law and has significant implications for the modern legal system.

The degree of the scientific problem elaboration. In Russian doctrine, the topic concerning escrow is not sufficiently developed at the theoretical level.

Before the introduction of escrow into the domestic legal order, Russian doctrine was virtually devoid of comprehensive studies devoted to this institution, its description, and its functioning, particularly in other countries. While, for example, trust was given considerable attention in the Anglo-Saxon legal system, comprehensive studies devoted to the analysis of escrow in foreign legal systems were virtually nonexistent. Doctrinally, discussions of this institution were limited to the publication of articles that explored only certain aspects of escrow. Notable among these studies are the works of Afanasyeva T.I. and Vladykin A.A., devoted to the mortgage-backed securities market, and Stepanyan I.G., on cross-border international treaties. Recently, Binkovskaya A.A. and Khamov A.Yu. have addressed escrow in the context of studying shared construction.

Since the introduction of escrow into the Russian legal system, the overwhelming majority of contemporary works have focused on acknowledging the emergence of escrow in the national legal system and characterizing its advantages and disadvantages in shared-equity construction. Among the most insightful studies to date, the following stand out: M.A. Tokmakov's dissertation (2017), devoted to a comparative analysis of escrow in Russian and American law, and Ya.V. Dorofeeva's dissertation (2022), which addresses general theoretical issues regarding escrow agreements.

The purpose and objectives of the study. The purpose of this research is a comprehensive study of civil law regulation of relations arising from escrow.

To achieve this purpose, the following objectives were set:

1) to define the legal nature of escrow against the backdrop of missing common law prerequisites — the historical birthplace of the institution — within the domestic legal system;

2) to conceptualize the core approaches established in the domestic legal order regarding the essence of escrow and its position among similar private law frameworks;

3) to correlate the status of an escrow agent in Russia with the internationally recognized concepts of a trustee, agent and fiduciary, identifying their distinctive features;

4) to identify the specific characteristics of escrow legal regimes established under Russian law and to construct a comprehensive framework for the corresponding obligations;

5) to delineate the key emerging features of mandatory and mixed (dispositive-imperative) escrow mechanisms in Russian law, and to formulate recommendations for their further legislative refinement;

6) to identify the reasons behind the low demand for voluntary escrow, examine the primary regulatory approaches to this institution in foreign jurisdictions, substantiate the trends for its further development under Russian law, and formulate recommendations for its legislative refinement;

7) to classify escrow agents based on the scope of their powers determined by the specific escrow legal regime (type), and to delineate the distinctive features of their legal status;

8) to formulate the entry criteria required for obtaining the status of an escrow agent;

9) to evaluate the demand for the «asset-shielding» function inherent to escrow, and to outline its advantages and disadvantages across various fields of escrow application.

The object and subject of the study. The object of the study is social relations arising in the process of escrow.

The subject of the research is the provisions of the doctrine and law enforcement practice, as well as the legal regulation of escrow in Russian law and in the law of some foreign legal systems.

The theoretical and methodological basis of the research. The theoretical basis of the study is presented by the works of pre-revolutionary, Soviet and Russian scientists: Annenkov K.N., Batin V.V., Bashkatov M.L., Belov A.P., Braginsky M.I., Budylin S.L., Vavin N.G., Vasilevskaya L.Yu., Vitryansky V.V., Dozhdev D.V., Emelkina I.A., Efimova L.G., Zakharkina A.V., Zikun I.I., Ioffe O.S., Kanashevsky V.A., Karapetov A.G., Krasavchikov O.A., Makovsky A.L., Meyer D.I., Mikheeva L.Yu., Pokrovsky I.A., Ralko V.V., Rybalov A.O., Sinaisky V.I., Sukhanov E.A., Tokmakov M.A., Khotkevich A.M., Shershenevich G.F. and others.

The methodological basis of this research is formed by general philosophical methods — dialectics and metaphysics; general scientific methods — analysis and synthesis, induction and deduction; and specific scientific methods — statistical and historical. Among the specific legal methods, the methodological basis of this research is formed by the formal legal method, as well as the diachronic and synchronic comparative legal methods.

The information base of the research is represented by the norms of Russian legislation – the Civil Code of the Russian Federation, other federal laws, subordinate regulatory legal acts (decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, acts of state authorities), the norms of foreign legislation, in particular the legal systems of Austria, England, Germany, France and the United States of America, materials of Russian and foreign judicial practice, as well as monographs, dissertations, articles of domestic and foreign scientists.

The validity and reliability of the research results are achieved through the use of appropriate methodology and analysis of a wide range of sources, including both Russian and international regulatory legal acts, judicial practice, and scientific literature. The reliability of the obtained results is also confirmed by their validation within the scientific community. The main provisions of the research were discussed

at specialized conferences and published in journals recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation.

The scientific novelty lies in the fact that the research represents one of the first comprehensive dissertation studies of theoretical issues devoted to the analysis of the essence and legal nature of the institution of escrow with a comparative analysis in the study of the legal systems of common law countries and the continental European legal family, as well as the practical problems that have arisen in the context of the application of this institution in Russian law.

The dissertation analyzes, for the first time, the role of the state in the private-law mechanism of escrow. The author also conducted an in-depth analysis of the status of the escrow agent — including the activities of lawyers and notaries — within both domestic and foreign legal systems; this analysis served to substantiate the author's approach, developed in the dissertation, to defining the position and legal nature of the escrow agent within escrow obligation.

The provisions submitted for defense and having scientific novelty were formulated by the author based on the results of the research conducted:

1. It is substantiated that the mechanism of escrow as recognized under Russian law differs from the Anglo-American escrow model, given that it does not entail the division of ownership among the parties to the legal relationship. Prior to the transfer of property to the beneficiary, the ownership rights over the escrowed property remain with the depositor, while the escrow agent does not acquire any property title and acts strictly as a party to the obligation within the scope of their designated powers. Furthermore, escrow is not analogous to European institutions such as the German *Treuhand*, the French *Fiducie*, or the closely related Russian trust management of property, as the latter are bilateral in nature, involve broader managerial powers (up to the right of disposal), and are not considered methods of fulfilling an obligation. What these institutions share is their functional purpose: securing the interests of both the depositor and the beneficiary of the obligation through the services of an escrow agent or property manager, who holds the debtor's

property until the contractual condition is met, thereby triggering the transfer of the escrowed property to the beneficiary.

Regulation submitted for defense corresponds to clause 5 and clause 8 of the specialty 5.1.3. Private law (civil) sciences.

2. It is established that the legal status of an escrow agent is distinct from that of a representative, attorney-in-fact, agent, commission agent, or trustee. Under Russian law, the legal status of an escrow agent does not entail the transfer of a real right (property right) in the deposited assets to the agent; rather, it vests the agent with a specific set of rights and obligations. This status most closely resembles that of a service provider performing, for a fee, the functions of holding another party's property in escrow, ensuring its safekeeping, managing it within defined limits, and — upon the occurrence of specified conditions — disposing of it by transferring it to the beneficiary.

Regulation submitted for defense corresponds to clauses 5, 6, 8 of the specialty 5.1.3. Private law (civil) sciences.

3. It is established that in Russian civil law toward demarcating escrow arrangements into mandatory, mixed (dispositive-imperative), and voluntary models, based on the dual criteria of the grounds for their creation and the method of legal regulation.

Formulated are the distinctions between the legal regimes (types) of mandatory, mixed (dispositive-imperative), and voluntary escrow arrangements.

The distinctive nature of mandatory escrow arrangements is defined by their statutory origin and their status as a requisite element of the principal transaction. This mechanism relies heavily on the imperative method, which dictates mandatory standards for the selection of parties, execution methods, subject matter, material covenants, asset release triggers, breach consequences, and the escrow agent's regulatory status.

The specific nature of mixed (dispositive-imperative) escrow lies in the combination of the parties' autonomy upon the initiation of the obligation and the imperative method of regulation. Argued is the variability of the dispositive element

within this legal regime (type), which manifests either in the voluntary choice of the escrow mechanism (where the grounds for creation stem from the agreement of the parties) or in its selection from legally prescribed alternatives that form an indispensable element of the underlying legal relationship. The mandatory component of the mixed escrow legal regime is expressed through the imperative method of regulation, which substantially narrows the scope of the parties' free discretion.

Regulation submitted for defense corresponds to clauses 5, 7, 8 of the specialty 5.1.3. Private law (civil) sciences.

4. Proven is that the legal nature of the mandatory escrow of funds in an escrow account within project finance is characterized by state intervention, where the state acts as a guarantor of stability in deposit relations and protects the depositor (the participant in equity construction) as the weaker party to the legal relationship through the creation of a system of special legal filters and protective instruments. In contrast to the voluntary escrow model, where the guarantee for realizing the parties' interests lies in the free choice of the escrow agent — ensuring the trust of both the depositor and the beneficiary in that entity — the mandatory model is characterized by the following forms of state participation:

- the delegation of escrow agent functions to a limited circle of banks in order to establish a «filter» for escrow agents, aimed at minimizing the risks of abuse and bankruptcy;

- the insurance of funds placed in escrow accounts, which enables the state to assume subsidiary liability within the established statutory limits;

- the payment of compensation or the implementation of construction completion measures by the Public Law Company «Territorial Development Fund» (hereinafter referred to as the PLC «Territorial Development Fund»).

Regulation submitted for defense corresponds to clauses 5, 8 of the specialty 5.1.3. Private law (civil) sciences.

5. Based on the scope of the escrow agent's powers—whereby mandatory and mixed (dispositive-imperative) escrow arrangements entail a strictly statutory

set of powers, whereas voluntary arrangements involve a model of conduct agreed upon by the parties to suit their specific interests—it is proposed to classify escrow agents into two groups: «active» escrow agents in voluntary escrow arrangements and «passive» escrow agents in mandatory and mixed (dispositive-imperative) escrow arrangements.

«Active» escrow agents do not merely ensure the safekeeping and transfer of property to the beneficiary upon the occurrence of grounds specified in the contract — as prescribed by the general rule of the Civil Code of the Russian Federation — but also perform other actions similar in legal nature to the management of another party's property: they exercise a heightened degree of care during safekeeping (e.g., preserving the property's value or legal protection, arranging insurance, or — for works of art or items of high artistic value — taking measures to ensure specific storage conditions); they verify the grounds for the fulfillment of a condition not only by checking documents for formal compliance but also, where necessary, by conducting site visits and engaging experts; and they may perform other acts regarding the disposition of the property (beyond simply transferring it to the beneficiary), among other things.

Regulation submitted for defense corresponds to clauses 5, 6, 8 of the specialty 5.1.3. Private law (civil) sciences.

6. «Entry» criteria for obtaining escrow agent status have been proposed, contingent upon the entity's legal status. The first group comprises professional participants in civil commerce — such as attorneys, notaries, and banks — who are already subject to specific statutory requirements for authorization to conduct their activities. Consequently, imposing additional requirements for authorization to perform the functions of an escrow agent is unnecessary.

The second category comprises individuals and legal entities — such as real estate agencies — for whom acting as an escrow agent entails mandatory accreditation and inclusion in the relevant unified registry. The minimum criteria for entering the field of escrow agency services include:

- legal capacity for individuals and legal personality for legal entities;

- a prohibition on acting as an escrow agent for individuals with a criminal record for economic crimes;
- a prohibition on acting as an escrow agent for individuals or legal entities affiliated with the depositor or the beneficiary;
- a requirement for individuals performing escrow agent functions to hold a degree in law or finance;
- the possession of professional liability insurance.

Regulation submitted for defense corresponds to clauses 5, 6, 8 of the specialty 5.1.3. Private law (civil) sciences.

7. The author substantiates the existence of varying law-enforcement approaches regarding mandatory, mixed (dispositive-imperative), and voluntary escrow arrangements — specifically concerning the levy of execution on escrowed property to satisfy claims against the parties to the arrangement, in light of the «shielding» effect of the property placed in escrow.

The rules regarding immunity from enforcement set forth in the Civil Code of the Russian Federation apply to voluntary escrow arrangements. In the case of mandatory escrow arrangements within project financing, however, the bankruptcy of the escrow agent (bank) or the beneficiary (developer) necessitates — alongside «shielding» — special rules to protect the depositor (shared-construction participant). Given the involvement of the Deposit Insurance Agency in the bankruptcy of the bank (escrow agent), and the Public Law Company «Territory Development Fund» in the bankruptcy of the developer, it is proposed to designate them as legal successors to the escrow agent in the respective scenarios.

Regulation submitted for defense corresponds to clauses 5, 8 of the specialty 5.1.3. Private law (civil) sciences.

The theoretical and practical significance of the research lies in the fact that it presents a comprehensive study of the civil law regulation of relations arising from escrow in the Russian legal system, as well as reference to international legal systems of both common law countries and continental European legal systems. The

findings of this dissertation may have theoretical and methodological significance for subsequent research in this area.

The practical significance of the dissertation research lies in the fact that the results of the research can be applied in the framework of teaching activities, and the recommendations formulated in the dissertation research can be used to clarify the existing provisions of regulatory acts governing legal relations arising as a result of escrow.

Approbation of the research results. The main findings and results of the study are reflected in scientific publications, in particular in the collective monograph «State Security and Human Well-Being» on the use of escrow accounts in individual housing construction, as well as in publications peer-reviewed by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation:

- The legal status of lawyers and notaries as escrow agents in Germany // *Agrarnoe i zemel'noe pravo* [Agrarian and land law]. – 2022 – № 8(212). – P.78-80.

- The main problems of escrow agents in Russia, Germany and Austria // *Yuridicheskij mir* [Legal world]. – 2022 – № 10. – P. 43-47.

- The use of escrow in foreign countries // *Pravo i gosudarstvo: teoriya i praktika* [Law and State: Theory and Practice]. – 2023 – № 9(225). – P. 269-271.

- Evolution of the approach to understanding the escrow agent // *Yuridicheskij mir* [Legal world]. – 2023 – № 3. – P. 25-28.

- Phased disclosure of escrow accounts (analysis of Poland's experience) // *Pravo i gosudarstvo: teoriya i praktika* [Law and State: Theory and Practice]. – 2024 – № 10(238). – P. 307-309.

- Phased disclosure of escrow accounts (analysis of the experience of Germany and Austria) // *Yuridicheskij mir* [Legal world]. – 2025 – № 1. P. 26-29.

The results of the dissertation research were also reflected in research papers presented at meetings of the Department of Civil Law and Procedure of the M.M. Speransky Faculty of Law of the Institute of Law and National Security of the Russian Presidential Academy of National Economy and Public Administration, as

well as at roundtables and international scientific and practical conferences, including:

- the International Scientific and Educational Forum «The Role of Law and Economics in Ensuring National Security: New Strategies and Challenges» (2022);
- the International Scientific and Practical Conference «Value Foundations of Russian Legal Culture», dedicated to the memory of Professor, Corresponding Member of the Russian Academy of Sciences Gennady Vasilyevich Maltsev (X Maltsev Readings) (2023);
- the International Scientific and Practical Conference of Students, Postgraduates and Young Scientists «IX Speransky Readings» (2023);
- the III-rd International Scientific and Practical Forum «State Security and Human Well-Being: New Strategies and Challenges» (2023);
- the meeting of the Student Scientific Community of the Department of Civil Law and Procedure of the M.M. Speransky Faculty of Law of the Institute of Law and National Security of the Russian Presidential Academy of National Economy and Public Administration (2024);
- the International Scientific and Practical Conference of Students, Postgraduates and Young Scientists «X Speransky Readings» (2024);
- the International Scientific and Practical Conference «Traditions and Innovations in Law», dedicated to the memory of Professor, Corresponding Member of the Russian Academy of Sciences Gennady Vasilyevich Maltsev (XII Maltsev Readings) (2025).

The structure of the dissertation is determined by the stated purpose and objectives of the research. The research comprises of an introduction, four chapters, a conclusion and a bibliography.