ISSN 1563-0366
Индекс 75882; 25882

ӘЛ-ФАРАБИ атындағы ҚАЗАҚ ҰЛТТЫҚ УНИВЕРСИТЕТІ

ҚазҰУ ХАБАРШЫСЫ

Заң сериясы

КАЗАХСКИЙ НАЦИОНАЛЬНЫЙ УНИВЕРСИТЕТ имени АЛЬ-ФАРАБИ

ВЕСТНИК КазНУ

Серия юридическая

AL-FARABI KAZAKH NATIONAL UNIVERSITY

KazNU BULLETIN

Law series

№1(73)

Алматы
«Қазақ университеті»
2015

V 381.
164-170

Aisultanova K.A.,
Nurahmetova G.G.,
Ermuhametova S.R.

Legal regulation of some matrimonial property problems

This article is devoted to questions of legal regulation of joint property of spouses. Currently, Kazakhstan has expanded the scope of property relations , especially in the transfer of rights to immovable property. Joint property of the spouses is any acquired by them during the marriage movable and immovable property. In connection with the mandatory registration of rights to immovable property and transactions with it in practice, registration authorities, the question arose about the order of registration of the right of joint ownership of the spouses. The article describes the procedure of registration of rights, if the immovable property acquired in the name of one of the spouses.

Key words: property, joint property of spouses, division of marital property, registration of rights to immovable property.

Айсұлтанова К.А.,
Нұрахметова Г.Г.,
Ермухаметова С.Р.

Ерлі-зайыптылардың бірлескен ортақ меншігінің құқықтық реттелуі

Аталған мақала ерлі-зайыптылардың бірлескен ортақ меншігінің құқықтық реттелуінің сұрақтарына арналған.Ерлі-зайыптылардың бірлескен ортақ меншігі неке кезінде жинаған жылжымайтын және жылжитын мүліктері болып табылады.Қазіргі кезеңде Қазақстанда мүліктік қатынастардың қолдану аясы кеңейді,оның ішінде жылжымайтын мүліктердің ауысу құқығы.Жылжымайтын мүліктерді міндетті түрде тіркеуге байланысты және мәмілелерді тіркеуге байланысты практикалық органдарда ерлі-зайыптылардың бірлескен ортақ меншігін тіркеу тәртібі туралы сұрақтар туындады.Мақалада жылжымайтын мүліктерді ерлі-зайыптылардың біреуінің атына алынған кездегі жағдайы қарастырылған.

Түйін сөздер: мүлік,ерлі-зайыптылардың бірлескен меншігі,ерлі-зайыптылардың мүлкін бөлу,жылжымайтын мүлікті тіркеу.

Айсултанова К.А.,
Нурахметова Г.Г.,
Ермухаметова С.Р.

Правового регулирования совместной собственности супругов

Данная статья посвящена вопросам правового регулирования совместной собственности супругов. Общей совместной собственностью супругов является любое нажитое ими в период брака движимое и недвижимое имущество. В настоящее время в Казахстане расширилась сфера имущественных отношений, особенно в части перехода прав на недвижимое имущество. В связи с обязательной регистрацией прав на недвижимое имущество и сделок с ним в практике регистрирующих органов встал вопрос о порядке регистрации права совместной собственности супругов. В статье рассмотрен порядок регистрации прав, если недвижимое имущество приобретено на имя одного из супругов.

Ключевые слова: имущество, совместная собственность супругов, раздел имущества супругов, регистрация прав на недвижимое имущество.

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UDC 347.61/.64

Aisultanova K.A., Nurahmetova G.G., *Ermuhametova S.R.

Al-Farabi Kazakh National university
The Republic of Kazakhstan, Almaty
*E-mail: saulehan11r@mail.ru

LEGAL REGULATION OF SOME MATRIMONIAL PROPERTY PROBLEMS

In the legal regime of marital property, all acquired during the marriage is their joint property. The participants of this property are the only spouses. It follows that, regardless of the active participation of each of the spouses in the creation of the common property ,they have equal rights to it. Matrimonial property - property acquired by them during the marriage. Mistakenly called «civil marriage» actual family life, even long-term, but without proper registration of marriage, does not create a joint ownership of the property. Temporary separation of the spouses does not contradict the legal regime of their property.

To property acquired by the spouses during the marriage (common property of spouses) is include the income of each spouse from employment, business and results of intellectual activity, received pensions, benefits and other payments that do not have a special purpose (the amount of material assistance, the amounts paid in compensation for the loss of ability to work due to injury or other damage to health, and others). Common property of the spouses are also purchased from the general revenues of the spouses movable and immovable property, securities, shares, deposits, shares in the capital made to the credit institution or other commercial organizations, and any other acquired by the spouses during the marriage property regardless of whether in the name of the spouse who acquired it or the name of someone or someone spouse made cash. Joint property of spouses is any acquired by them during the marriage of movable and immovable property which may be the subject of property rights of citizens, regardless of the name of one of the spouses it was purchased or made cash.

Movable and immovable property acquired from the general revenues of the spouses is recognized as joint property. These things become joint property after transferring the ownership to one spouse. Consequently, the acquisition of property by one spouse from a third party and other spouse also has a right to acquire it. Basis of property rights of the first spouse which signed purchased contract with a third party for the sale, exchange, etc., and the second spouse has a right to own according to the direct instructions of the law on joint property of the spouses of property acquired during the marriage.

According to paragraph 1 of Article 33 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family"

(hereinafter - the Code), the property acquired by the spouses during the marriage (marriage) is their joint property. [1] Also, in accordance with paragraph 1 of Article 223 of the Civil Code of the Republic of Kazakhstan (hereinafter - CC RK), matrimonial property - the property acquired by the spouses during the marriage is their joint property if the contract between them provided that the property is a shared property spouses or belongs to one or the relevant parts of each of the spouses the right of ownership. [2]

From this, it follows that the legal regime of marital property regime is their joint property if it has not been set in the marriage contract.

In accordance with Article 220 of the Civil Code of the Republic of Kazakhstan spouses jointly own and use common property and dispose of it by mutual agreement, which is expected no matter which one of the spouses made a deal to dispose of property. In transactions requiring notarization or state registration, in accordance with paragraph 3 of Article 220 of the Civil Code of the Republic of Kazakhstan, the consent to the transaction by one spouse to another needs to be validated by a notary. Rights of spouses to own, use and dispose of property are equal. They do not depend on the actual contribution of each spouse to the creation of the common property. Spouses have equal rights to property.

In the case of the division of property, which is a joint property of the spouses, their share is usually considered equal. According to the rules of notarial acts notaries, approved by order of the Minister of Justice of the Republic of Kazakhstan dated January 31, 2012 № 31, in the commission of one of the spouses of the transaction on the order of the common property of the spouses is assumed consent of the other spouse if the marriage contract does not establish a different treatment of the property. [3] To commit one of the spouses of the transaction under the order (purchase) or termination of the transaction, which requires notarization and (or) registration in the manner prescribed by law, it is necessary to request a notarized consent of the other spouse or a statement that the owner of the property to be alienated is not married, with the exception of disposals of property acquired by the spouses on the basis of gratuitous transactions before marriage or by way of inheritance, as well as with the exception of disposals of property, which is owned by his wife in the regime of separate property on the basis of the marriage contract. In the latter case, the notary presented a prenuptial agreement.

The registration of rights to the property, which is common property of the spouses must be in accordance with the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" to submit the registration authority a notarized consent of the spouse to complete the transaction. According to Article 22 chapter 6 of the Law of the Republic of Kazakhstan of July 26, 2007 № 310-III «On state registration of rights to immovable property", for registration of the rights of the other spouse, details of which are not contained in the documents of title, the applicant who has reached the age of consent in accordance with the legislation of the Republic of Kazakhstan, in the application for registration shall specify the information about the fact there is no state in marital relations or information about your spouse with a copy of the document confirming the existence of the marital relationship. If the marriage contract is set to shared or separate ownership of the immovable property of the spouses, the registering authority granted the marriage contract. [4]

Based on the above, the registration of rights to immovable property in the State database "Real Estate Registry" made information on all owners who are owners (that is, the two spouses).

It should also be noted that the designation of one of the owners of real property in the pledge agreement, in the presence of a notarized consent of other owners (husband or wife), is not no lawful or not lawful, in this regard, when applying for registration of the contract of pledge registration authority shall register the contract

As has been the above, in accordance with Art. 223 CC jointly owned property is property owned by two or more persons without specifying the shares of each of the owners of the right of ownership to it, with joint ownership arises only in cases prescribed by law. One such case is the joint property of the spouses - the Code specifies that the legal regime of marital property regime is their joint property. In practice, there is a question about the status of the property received by both spouses on gratuitous transactions (for example, the privatization contract, donation) - whether the property is jointly owned, and therefore it is subject to the norms of family law, or it is a common property regulated by common rules of civil law? Resolving this issue is of great practical importance, since it affects the future fate of the property, including the introduction of such facilities in the community property to be distributed according to the norms of the Code, the opportunity to enter into a marriage contract in respect of the property, etc.

Common is the assertion that the property received by the property of the spouses during

the marriage by gratuitous transactions is their joint property. This statement, in our opinion, is not absolutely certain on the following grounds: Article 33 of the Code defines a joint marital property as property acquired during the marriage, and also lists the property. At the same time, the Code does not define the concept of "marital property." Listed in paragraph 2 of Art. 33 of the Code property can be divided into two types, as it is set out in a provision of law: first - the income of each spouse (from labor, business and intellectual property), pensions and benefits, as well as certain types of payments, second - acquired from the general revenues of the spouses movable and immovable property, securities, shares, deposits, shares in the capital made to the credit institution or other commercial organizations, and any other acquired by the spouses during the marriage, regardless of whether the property in the name of someone spouse acquired it or the name of one of the spouses or who made money.

However, many researchers of family law split the list of assets referred to in the second form, for certain types. At the same time a sign of acquisition of the property from the general revenues relate to movable and immovable property, securities, units of, deposits, shares in the capital made to the credit institutions and other commercial organizations, and do not relate it to any other property acquired by the spouses during the marriage although at the same time the words "regardless of the name of one of the spouses acquired it" refer to those objects. In our opinion, analyzing art. 33 of the Code, it is possible to draw the following conclusions: - the concept of "property acquired by the spouses" means: a) income earned by spouses (one of them), as well as compensating lost wages or inability to obtain it, and b) property acquired from general revenue;

the concept of "property acquired by the spouses" is not identical to the concept of "acquired for any reason", otherwise, why separate the notion of "acquired" and "acquired"; -the words "regardless of the name of one of the spouses acquired it" refers not only to "any other property" and to all listed property, including real estate; - separation sign "the acquisition of property from the general revenues of the spouses" to acquire "any property ..." is not based on the grammatical interpretation of the rules of law, the word "and" in this case is used for the transfer of the property purchased from the general revenues;

– an indication of the law on the acquisition of property from the general revenues of the spouses is onerous nature of transactions in which the property comes into the joint property of spouses. the concept of "property acquired by the spouses" is not identical to the concept of "acquired for any reason", otherwise, why separate the notion of "acquired" and "acquired";

– the words "regardless of the name of one of the spouses acquired it" refers not only to "any other property" and to all listed property, including real estate; - separation sign "the acquisition of property from the general revenues of the spouses" to acquire "any property ..." is not based on the grammatical interpretation of the rules of law, the word "and" in this case is used for the transfer of the property purchased from the general revenues;

– an indication of the law on the acquisition of property from the general revenues of the spouses is onerous nature of transactions in which the property comes into the joint property of spouses.

Thus, when entering the property, including real estate, the property of both spouses on the gratuitous transactions (contract of donation, free privatization) there is no joint ownership of spouses and common ownership. The fact of the marital relationship in these cases is legally irrelevant, in the privatization of housing is important fact of tenancy agreement, the donation of the property - the identity of the done. Accordingly, the resulting relationship between the spouses, co-owners are not governed by the rules of family law and general civil law. Based on the foregoing, subject to Article 33 of the Code, real estate, in our opinion, will be the joint property of the spouses, if it meets the following conditions:- acquired during the marriage;

– acquired on a reimbursable transaction;

– acquired from the general revenues of the spouses,

– marital agreement is not modified regime of joint ownership (the contract can be concluded as to the acquisition of the property, and after the acquisition).

In the absence of at least one of these conditions the property can not be owned jointly by spouses. For example, there are cases of acquisition of property by one spouse on a reimbursable transaction, but at their own expense, for example, existing prior to the marriage, or received as a gift, or the proceeds from the sale of the property to him personally, in particular, received by inheritance or property in order free privatization. In this case, I have practiced, in addition to the submission of documents confirming the origin of the funds (the contract of donation of money, a contract of alienation personally owned property,

tc.), require the application of the second spouse, onfirming that the joint funds for the acquisition of property is not used. All this is reflected in the text of the treaty, and in the subsequent consent of the spouse on the disposition of the property is not claimed.

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2 Civil Code of the Republic of Kazakhstan (General Part), adopted by the Supreme Council of the Republic of Kazakhstan on 7 December 1994 (as amended and supplemented on 10.06.2014).

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