

# CONDOMINIUM AND RIGHT OF OWNERSHIP

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**Condominiums, as “indivisible complexes of real estate” were entitled to exist as long as five years ago, when the Law on Condominiums in the Housing Fund was adopted. Nowadays, more than 90 percent of Moldova’s housing fund is privatized. Nevertheless, the number of condominiums in the entire country is scarce. And for the moment, a sharp increase in that number is not at all expected.**

## **What Laws Say About That**

In 1993, according to the Law on Privatization of the Housing Fund, owners of privatized housing were already “co-owners of plumbing installations and communications, public spaces, and lands, associated with houses” (item 1, art. 8). Non-habitable premises within the residential housing (item 2, art. 8 – introduced by Law No. 468-XIV as of 25.06.99), “which are not included in the cost, and in the equivalent area of apartments subject to privatization, except for public spaces – stairs, staircases, terraces, basements, lift shafts, thermal and electric energy and water distribution points”, remained as state-owned property, and were subject to privatization “in a manner required by law”.

Standard form contracts, which were used for privatization of apartments, contained a detailed description of apartment (address, number of rooms, overall and dwelling space), data about its cost, and the share of jointly used property.

In the year 2000, owners of real estate in condominium got the right to dispose of

common property on a cost-sharing basis (item 3, art. 5 of the Law on Condominium in the Housing Fund).

The notion of common property was described in this law as “all elements of property that fall within common use: land plot under the house (houses); walls, roofs terraces, chimneys, staircases, halls, basements, cellars and crawl floors, trash chutes, lifts, indoor and outdoor engineering equipment and systems, which service several apartments (premises); adjacent land plots within the established borders with landscaping; other objects, which are designed for maintenance of condominium’s real estate” (art. 5).

According to the law, apartments and non-living premises that fall within “private, state, or municipal ownership”, as well as common property and “building extensions, pavements, roads and parking lots, perennial plantations, and other objects” were also to make part of condominium, if they were located on the adjacent territories within the established borders.

*In modern law books, condominium is usually defined as one of the forms of common ownership of real estate, in which each resident of a building, consisting of many independent parts, owns an independent part and a share in the common indivisible ownership (halls, corridors, etc.)*

*In the United States of America, condominiums became particularly popular in 1960-1970 in apartment blocks, and are used for office buildings, parking lots, etc. Means, obtained from maintenance of common property, are transferred to condominium, and are used for its maintenance.*

The law regulated the creation of condominiums and transfer of property. Unification “into association of real estate owners in the obligatory manner” was the first step.

Local governments had to determine the borders of territory of each condominium in

the existing buildings “during 30 days since application on behalf of association of co-owners”, “on the basis of the size of the territory, associated with the building(s), approved by the general layout.” (art. 8, 9). They had to “freely give into co-ownership the land plots under the residential buildings and other real estate objects in condominium as common property” (art. 9).

### **What Happened in Reality**

According to the opinion of **Ilie Teaca**, lawyer at Alliance to Save Energy, the acting Law on Condominium in the Housing Fund did not give the possibility to solve the issue of interrelation between owners of apartments and tenants (or occupiers) of non-living premises in these houses, who obtained such premises on the basis of contracts with local governments.

In the majority of cases, they would close direct contracts with suppliers of services, based on which they would pay only for their consumption proper, whereas owners of dwellings, who were members of association, had to cover losses in the house networks.

There were also cases of closing direct contracts on heating of 10 square meters of non-living premises. In fact, 100 square meters were used. This payment was also to be executed by owners of apartments. It turned out to be impossible to make tenants fully pay their costs, because they were not members of associations.

Although according to the law, owners of privatized dwellings jointly possess the land associated with the house, in reality such land plots are often privatized separately, including at auctions. It does not only deprive owners of dwellings of the possibility to use such, but often creates additional inconveniences to the residents.

Other CIS countries faced the same problems. During privatization in those countries, like in Moldova, the cost of apartments did not

include the cost of common property: attic floors, basements, foundations, etc. And although owners of apartments paid taxes by taking into account the cost of common property, municipal authorities, in many cases, still considered it their ownership.

For several years now, the presidents of Moldovan associations of owners of privatized apartments have been trying to find a solution, but the process of registration of condominiums is virtually paralyzed for reasons beyond their control.

Alla Poltavcenko explains: “Our association unites owners of privatized apartments in 12 five-storied buildings. We inherited from the previous generations the real estate in the form of obsolete housing fund. When privatizing their apartments, residents were not aware of the fact that they automatically assumed the commitment to repair and maintain the entire building. They were not ready either emotionally, or financially.



*Alla Poltavcenko,  
President of  
Association of Owners  
of Privatized  
Apartments, City of  
Chisinau*

Before starting the procedure of privatization, it was necessary to overhaul the buildings; but it did not happen. Financial resources obtained during privatization, which according to the law had to return to the housing fund (for repair and maintenance thereof), were not transferred to the created Associations of owners of privatized apartments, and were distributed mainly among the municipal utilities.

Associations’ size restriction (not more than 500 apartments) also negatively affects the activity of our organizations: the lower is the

number of apartments in association, the higher are the maintenance costs to be paid by residents. Nowadays, 30 bani from one square meter are allocated for maintenance of buildings. This is catastrophically insufficient – prices keep increasing, like mushrooms after the summer rain, whereas the rates are at the 2002 level.

Three years ago, after becoming President of this Association, I faced the problems, which are impossible to be overcome independently. I started to study the legislative framework, which regulates the activity of organizations similar to ours, and found a lot of contradictions. I had to consult with utility service professionals, who worked for a long time as presidents of associations for most optimal solutions to the emerging problems within the current constraints.

Currently, associations of owners of privatized apartments have no rights. For example, two months ago I asked Mr. Bannicov, Minister of Privatization, why the basements in our buildings were sold without knowledge to the Association's President and members. Mr. Bannicov replied that residents privatized only their apartments, and not roofs and basements. As a result, I ask "Why, dear gentlemen, didn't you allocate any funds for these objects, and placed the back-breaking burden of these objects' maintenance onto the retired with miserable pensions?"

According to the law both roofs and basements, in addition to house territories must belong to residents of buildings, and these residents must operate them through the created associations.

The Law on Condominium in the Housing Fund, adopted back in 2000 unfortunately does not operate. In addition, the former Parliament created amendments to this law, which were nearly ratified by the current session of the Parliament. If this had happened, the situation would have become even more aggravated.

Presidents of associations have persistently addressed municipal and central governments with proposals to improve the situation, but the requests have remained neglected. This is the reason the housing associations in Moldova are uniting into a coalition – to solve the problems of municipal housing economy through joint efforts more efficiently."



**Vladimir Haiut,**  
*President of  
Association  
of Owners of  
Privatized  
Apartments, City of  
Chisinau*

Vladimir Haiut explains: "Our association is located in the very downtown, which is a real conglomerate of problems for residents.

I believe that the rights of apartment owners and business entities, who utilize a residential building for profit reasons, can not be equal, requiring a different framework of regulation.

Business entities should not have rights of ownership over the common places in residential buildings: staircases, entries, adjacent territory, etc. Nobody forbids them create condominiums in the buildings, where all premises have been privatized by same business entities, and where all have equal rights.

In one of the association's residential buildings, a man bought two apartments for his business and, immediately, seized the staircase and the adjacent territory. There was a case when the Municipal Council conveyed a 1-hectare land plot associated with the building, which was developed by the residents (they built a merry-go-round, benches, put the plantings, etc.) to a business entity. The Law on Privatization of the Housing Fund, dated 1993, stipulates that the

land associated with the building, shall be co-owned by residents of privatized apartments. However, the amendments to the Law on Condominium in the Housing Fund were recently submitted for examination by the Parliament.

Nowadays, a redistribution of property is underway – giving property to those not entitled to own it. Instead, those entitled are deprived of property, which is given to those who are not authorized to have it, trying to legalize it.”



**Marina Andronicova**, *Official Representative. Balti Municipal Council of Privatized Apartment Owners Association*

Marina Andronicova continues the narrative: “Privatization of housing has drastically changed the structure of the housing fund through various forms of ownership, and created a new echelon of owners - a social basis for the housing reform. Individuals, legal officials, the State, and municipalities became owners of apartments and non-living premises.

Search for apartment block management schemes, and of legal regulation of relations between owners of common property, became an important task in the housing sector.

Apartments are not the only component of a residential building. It can be called a house in a broad sense, which includes total infrastructure: apartments; non-living and auxiliary premises; technical equipment; territory designated for maintenance of the house.

The next issue to solve is the maintenance of the housing fund by owners, who were in essence not prepared to become proper

landlords. For this purpose, the creation of associations of owners of privatized apartments and condominium was undertaken. The main objective of the associations became the improved maintenance of the housing fund and rational use of co-owners’ payments.

In the majority of countries, the classic condominiums are very rich organizations. As for us, we invented our own variant, which creates regular conflicts between owners of privatized apartments, business entities that purchase areas in the houses, and suppliers of services.

Business entities, which currently lease non-living premises, do not share the costs for maintenance and exploitation of residential buildings, in which they carry out business activity. The suppliers of services collect the payments at non-regulated tariffs. This is why the “monopolies” of service suppliers and business entities prosper, and the housing degrades. Abroad, the biggest part of payment is directed to maintenance of a house, whereas the rendered services are several times cheaper.

Residents should pay attention to their potential, as many of them are businessmen who could run their business within his/her residences. They have a priority right to use non-living premises and the adjacent territories. Nowadays, business activity is prosperous, and significant profits are made by those not entitled within the housing sector.

It is necessary to consider the housing fund as a perspective capital-intensive economic sector, which is able to develop small-scale and family business. In the present situation residents do not utilize the possibilities of efficient administration of their houses, as they do not have the possibility to earn enough money for its maintenance and development.

Let's have a look at the conflicts. The main problem comes from the absence of property distribution mechanisms. Who is the owner? And what is the right of ownership?

Ownership includes three rights - possession, use, and allocation. It is a result of the poorly construed laws that owners of privatized apartments are not rightful owners of the entire residential estate, but merely the owners of their apartments. The right of allocation is the right to determine the legal destiny of property -the right to sell, pledge, gift, lend, demise, etc. The lack of the right of allocation diminishes the rights of the owner into a non-owner.

Another important issue is that the created condominiums of which there are few, and the existing associations of owners of privatized apartments do not have the capability of obtaining adjacent plots of land. Upon the creation of associations of owners of privatized apartments, the rights to request allocation of the plots of land comes into action. This plot of land must be freely transferred to the ownership of the association ownership within one month.

Nowadays, in the majority of cases, managers try in vain to obtain proprietorship of the adjacent territory. The business entities which own property within the housing fund are able to acquire title to the adjacent lands as well. Therefore, the struggle ensues. This will happen if the Parliament adopts the amendments and modifications to the Law on Condominium in the Housing Fund, which are currently being examined by the Parliament. As a result, residents will remain solely the owners of the privatized apartments.

Creation of real condominiums will energize the transition of ownership from public to private, involve the people in solutions of the country's housing issues, and will create a housing democracy and social partnerships. Therefore, I would like to wish the people to be more proactive, to strive for responsibility

for the state of their houses, streets, and towns."

Nowadays, it is very important to generate ideas, to share them with neighbors, and to seek opportunities for future prosperity together. If there is not enough knowledge and awareness, it is important to search and acquire it.

It is necessary to understand how important it is to have real owners in houses and courtyards, to help implement good initiatives and involving the young generation of residents by encouraging them to participate in the housing management process. It is the new generation which will be able to support the aging one because the progressive transition period has created a new class of experienced managers and businessmen.

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