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## The Formation of the Legislation of Ukraine on the Right of Common Joint Property in Apartment Houses

*The issue of common joint property in apartment houses in Ukraine was studied by such domestic scientists as M. Haliantych, G. Kovalenko, V. Brygilevych and others. At the same time, there was no analysis in scientific publications concerning the formation of the legislation of Ukraine on the right of common joint property in apartment houses. The author worked out and disclosed the legal framework concerning the theoretically substantiated issues of common joint property in apartment houses of the Ukrainian SSR and independent Ukraine. The attention is paid to housing cooperatives as a prerequisite for the emergence of common joint property in apartment houses. The circle of economic entities that may be authorized by owners of the house to manage common joint property of the apartment house is highlighted. The circle of rights and responsibilities of co-owners of the apartment house concerning the establishment of the association, the procedure for managing of the common property of the house is brought. The attention is focused on the exercise of voting right at meetings of co-owners. Both the inaccuracies of the wording of the law and its some aspects of improvement in common joint property in apartment houses institution formation process in Ukraine are outlined. In accordance with the set goal and objectives in this article the author used the following general scientific and special methods, in particular: generalization method; historical one; technical one; method of analysis. The author achieved this goal and for the first time co-owners rights expansion stages and the stages of formation of legislation on common joint property in apartment houses of Ukraine were formed and elucidated. The author continues to carry out further intelligence of the affected issue within the framework of scientific research.*

**Keywords:** cooperative; association of apartment house co-owners; co-owner; common joint property; apartment house.

**Problem statement.** According to the data of the Unified State Register of Enterprises and Organizations of Ukraine, as of January 1, 2017 the number of registered AAHC was 26080. As of December 1, 2017 this number has increased to 27838, which is by 1758 more than at the beginning of the year 2017 (without taking into account the temporarily occupied territory of the Autonomous Republic of the Crimea and the city of Sevastopol). The increase of these legal entities also requires clear legal regulation which is an important problem of the housing and utilities sector of Ukraine.

**Analysis of recent research and publications.** The issues on common joint property in apartment houses are raised by leading domestic scientists. The research of this subject is reviewed in works

by M. Haliantych, G. Kovalenko, V. Brygilevych and others. But there was no analysis in scientific publications concerning the formation of the legislation of Ukraine on the right of common joint property in apartment houses.

**The purpose of the article** is to disclose regulatory legal acts of the institute of common joint property in apartment houses, as well as sequencing the stages of formation of legislation in this area and the stages of co-owners rights extension.

**Presenting main material.** A significant role in the development of common joint property in apartment houses was played by the Law of the Union of Soviet Socialist Republics «On Cooperation in the USSR» [1], according to Part 1 of the Article 51 of this law, citizens may voluntarily create homebuilding, housing, garage-building, dacha-building cooperatives, associations of individual developers, other consumer cooperatives to meet their living needs.

The specified law has significantly accelerated work towards the development of common joint property in apartment houses of the Ukrainian SSR because it provided cooperatives and its members with the right to create appropriate housing at state-owned enterprises level.

In place of the aforementioned law, the Law of Ukraine «On Cooperation» [2] was already adopted by an independent Ukraine. According to the Article 6, the law stipulates, in accordance with the tasks and nature of the activity, the following types of cooperatives: production, service and consumer. In the areas of activity, among other things, there are homebuilding cooperatives.

According to the Article 20 of the Law of the Ukrainian SSR «On Property» [3], one of the listed in the article legal entities of joint property is cooperatives.

The purpose of the organization of a housing construction cooperative, in accordance with the Resolution of the Council of Ministers of the Ukrainian SSR «On the Approval of the Model Statute of the Homebuilding Cooperative» (hereinafter – Resolution No. 186) [4], is to provide the cooperative members and their families with housing by building an apartment house (houses), and in cases stipulated by the legislation, single and double residential houses of a garden type or an apartment blocked house (houses) with outbuildings at the cooperative own expense with the help of bank loans, as well as for the subsequent operation and management of this house (houses). In accordance with the paragraph 19 of the Resolution No. 186, a residential house (houses) and outbuildings belong to a homebuilding cooperative on the right of cooperative property (except apartments in this house, which have fully paid in

installments by its citizens) and cannot be seized from it, sold or transferred by it as a whole and as parts (apartment, room) to organizations or individuals with the exception of the transfer carried out upon the liquidation of the cooperative.

The reason for settling in cooperative apartments is the order issued by the executive committee of the district, city, district council of people's deputies in the city on the basis of the homebuilding cooperative members' general meeting decision.

At the same time, cooperative property as a kind of collective property became one of the fundamental for the creation and acquisition of private property in residential houses by members of the homebuilding cooperative.

According to M. Haliantych and G. Kovalenko, one of the directions for accelerating the solution of the housing problem in Ukraine is the expansion of cooperative housing construction ensuring strict adherence to the legislation regulating the activity of the homebuilding cooperatives [5].

According to paragraph 15 of the Resolution No. 186, the homebuilding cooperative carries out the operation and repair of the residential house (houses) belonging to it and the maintenance of the adjoining territory at the expense of the cooperative on the basis of self-pay.

According to subparagraphs 3–5 of paragraph 16 of the Resolution No. 186, a homebuilding cooperative has the right: to improve the decoration and installation of more perfect equipment of a residential house and apartments at the expense of members of the cooperative; to transfer a residential house (houses) for maintenance to a housing management organisation, and in the countryside to the enterprise, institution, organization in which the cooperative is organized. At the request of the cooperative (cooperatives) for the operation of a residential house (houses), the housing management organisation of the cooperative (cooperatives) may be set up in the established manner; conclude the agreement related to the construction, operation and repair of residential house (houses) and outbuildings, their voluntary insurance and maintenance of the adjoining territory, as well as other agreements in accordance with the objectives of its activities.

Thus, after the homebuilding cooperative put a house into operation, the cooperative has the appropriate rights of the service organization, and the right to exercise control over the provision of services related to the operation of the apartment house (houses), as well as to conclude appropriate agreements for the provision of services relating to the house which is on its balance.

Houses serviced by homebuilding cooperatives were called the cooperative houses. However de jure, such a house could not be fully cooperative, because larger area of such a house was privately owned by the members of the cooperative who purchased residential premises. Only the property that was not transferred to the private property of the members of such cooperative remained the cooperative property, in particular adjoining territory, etc. Thus, the house has two types of property, both private and cooperative. The last one subsequently became common joint property (however this issue is ambiguous in today's economic environment).

At the same time, the organization, which was engaged in servicing of the house, took over and managed common joint property.

After adoption of the Resolution «On Declaration of Independence of Ukraine» [6] by the Verkhovna Rada of the Ukrainian SSR, on the territory of the newly-created state, which was officially named Ukraine, regulatory legal acts adopted by the Ukrainian SSR continued to operate.

According to Article 42 of the Constitution of the Ukrainian SSR [7], which provided citizens with the right to housing, it is provided that this right is ensured by the development and protection of the state and public housing stock, the promotion of cooperative and individual housing construction, an equitable distribution under the public control of the living space provided in the degree of implementation of the well-equipped residential premises construction program, as well as low payment for the apartment and utilities. Subsequently, Article 47 of the Constitution of Ukraine [8] stipulated that the state created conditions under which each citizen would have the opportunity to build house, purchase it or lease it.

Part 4 of Article 2 of the Law of Ukraine «On Property» [3] stipulated that property in Ukraine has the following forms: private, collective and state. All forms of property are equal.

The property may belong to citizens, legal entities and the state based on the right of joint common (partial or joint) property (part 2 of Article 3 of the Law of Ukraine «On Property»).

The formation of common joint property in apartment houses in Ukraine begins with the adoption of the Law of Ukraine «On Privatization of State Housing Fund» [9]. Part 2 of Article 10 of this law for the first time in Ukraine's independence states that the owners of apartments in apartment houses are the co-owners of the auxiliary premises of the house, technical equipment, elements of external improvement and are obliged to participate in the total expenses related to the maintenance of the house and the adjoining territory in accordance with its share in the property of the house. Auxiliary

premises (pantries, sheds, etc.) are transferred to the tenants' property free of charge and is not a subject for separate privatization.

Owners of apartments (houses) can create community or associations of individual owners of apartments and houses (Article 10 of the Law of Ukraine «On Privatization of State Housing Fund») in order to ensure efficient use of private apartments and their management.

According to the provisions of this law, it is understood that the right to own an apartment is fundamental to the realization of the rights of co-owners to create community or associations of owners in the house. Transferring state-owned housing to a private one, the state thus is in the process of establishing the law, extends the rights of co-owners of residential house on the way to self-management of such objects. Such actions on the part of the state form the institution of common joint property in apartment houses.

The transfer of the state housing stock to private property leads to the emergence of different forms of property in apartment house, in particular - private, state and collective property (common joint).

Part 1 of Article 361 of the Civil Code of Ukraine [10] provides that the joint property of two or more persons without the determination of the shares of each of them in the right of property is the common joint property.

A key feature in realization by the owners of apartments of rights regarding common joint property and the use of such rights as joint property management, the procedure for the use of joint property of a residential house, etc. is possible only in the presence of a collective protocol decision of the co-owners of apartment house. A way to fully realize co-owners' own rights is the creation of a community or associations of owners in accordance with the law.

Thus, paragraph 1 of the Resolution of the Cabinet of Ministers of Ukraine «On Approval of the Regulations on the Organization and Activities of Associations Created by Owners for the Management, Maintenance and Use of Property of Residential Houses, Which is in Common Use» [11] (hereinafter – Regulation No. 588) provides that for the management, maintenance and use of the property of residential house, which is in general use (auxiliary premises of the house, technical equipment, elements of external improvement of the adjoining territory, etc.), in the process of emergence of various forms of property associations of owners must be created.

Regulation No. 588 obliges co-owners to create the associations of owners, subject to the emergence of different forms of property in the house. Over time, the Resolution of the Cabinet of Ministers of Ukraine «On Approval of the Regulations on the Organization and

Activities of Associations Created by Owners for the Management, Maintenance and Use of Property of Residential Houses, Which is in Common Use» [12] changed the words «must be created» for the words «can be created», giving a wider right to co-owners of apartment houses in taking the appropriate decisions on the way to managing the joint property of the apartment house.

Owners of apartments for the maintenance of the operation of the apartment house, the use of apartments and joint property of a residential house can create associations of owners of apartments (housing). Such an association can also be created by the owners of residential houses. The association of owners of apartments, residential houses is a legal entity that is created and operates in accordance with the statute and the law (Article 385 of the Civil Code of Ukraine, as amended on January 16, 2003) [10].

Regulation No. 588 stipulates that the initial registration of the owners association was carried out on a free basis. There is also an incomplete list of agenda items to be held at the statutory meeting, in particular: creation of an association of owners, consideration and approval of the draft statute of the association of owners, creation of a working (initiative) group for the drafting of the first annual estimate of the association of owners, other issues.

In accordance with the Regulation No. 588, the share of property that is in common use cannot be separated or alienated; the owners of apartments, residential and not residential premises have no right to carry out construction works or other works, and also to take any actions that may damage the property that is in common use, or restrict its use or the convenience of other owners (for example, the right to free passage). Owners do not have the right to build any additional objects, basements or cellars without the consent of the board of the association.

Owners must comply with the requirements of this Regulation and the statute of the association of owners, including the obligation to ensure the requirements of the above documents by any person who leases or uses his premises.

Non-adherence to the above provisions is the ground for the occurrence of the owner or the association of owners whose rights are violated to appeal in due course with a claim to court to recover damages inflicted them in accordance with the sanctions provided for the statute and legislation.

Since the adoption of the Civil Code of Ukraine (2003), Article 385 was entitled «Association of Owners of Residential Houses, Apartments», and did not include such a concept as «the owners of non-residential premises in apartment house». At the

same time, the preamble to the Law of Ukraine «On Associations of Apartment House Co-owners» [13] stipulates that this Law determines the legal and organizational principles for the creation, operation, reorganization and liquidation of the associations of owners of residential and non-residential premises of the apartment house, protection of their rights and use responsibilities for the joint maintenance of the apartment house. As we see, in the said law, in contrast to the provisions of the Civil Code of Ukraine at that time, the concept was defined as «the owner of non-residential premises».

The Law of Ukraine «On Peculiarities of Property Rights Implementation in Apartment House» [14], among other significant changes, there was amended Article 385 of the Civil Code of Ukraine, which received the new title – «Association of Apartment House Co-owners». In addition to the title of the article its content was also changed and supplemented by the concept «owners of non-residential premises in apartment house».

One of the no less important on the way to realization of the rights of co-owners is a special Law of Ukraine «On Associations of Apartment House Co-owners» [13]. Article 2 of this law provides the procedure for the creation, reorganization, activity and liquidation of associations, unions as well as relations of entities of property rights concerning the use and disposal of joint property of co-owners in the association.

As the group of authors V. Bryhilevych, G. Kohut, V. Shvets, V. Shyshko, O. Shchodra notes, the creation of AAHC in residential houses – is the cornerstone of the reform of the housing stock management system, in particular, the joint property of the house. The owners of residential property are involved themselves in making decisions about their property management system and determining the costs for maintaining the house [15].

Compared with other organizational and legal forms of economic entities of Ukraine, the association of apartment house co-owners is a new legal form, as well as the union of association of apartment house co-owners.

Creation of a collective legal entity in the form of association of apartment house co-owners allows the co-owners to realize the appropriate rights, which are enshrined in the Law of Ukraine «On Associations of Apartment House Co-owners», in the provisions of the Land Code of Ukraine, etc. (in particular, the realization of the right to get property or permanent use of the land plot where the house is located or non-residential buildings).

Partial inaccuracy of the wording in the Law of Ukraine «On Associations of Apartment House Co-owners» was reflected in the achievement of the quorum at the constituent/general meeting of

co-owners of an apartment house. In accordance with Article 6 of this law, the constituent meeting is competent if more than fifty percent of the co-owners are present. A decision at a constituent meeting is deemed to be adopted if it is voted for by at least two thirds of present persons who have the right to vote.

For the actual implementation of such provision, the initiative group of the house needed:

a) 14 days in advance send to all co-owners of the house writing notification about the holding of the constituent meeting (by registered letter) and indicate in the notification all information in accordance with the Law of Ukraine «On Associations of Apartment House Owners»;

b) to ensure the presence of more than half of the co-owners at the constituent meeting in order to achieve the quorum;

c) to collect the signatures of «FOR» of two thirds of present co-owners.

Let's assume that the total number of apartment house co-owners is 100 people. If there are 60 people at the constituent meeting – the meeting is competent. But if voted at least two thirds of 60 attended co-owners, as provided by the law, then it would be equal to 40 votes or two thirds of the attendees. From the above it is seen that it is necessary 40 votes out of 100 for the decision to establish an association.

Such provision of the Law of Ukraine «On Associations of Apartment House Co-owners», in terms of voting at constituent meeting, was rather a disadvantage, rather than an advantage in the implementation of the co-owners' own rights.

These provisions were valid until 2015, that is before the adoption of the Law of Ukraine «On Peculiarities of Property Rights Implementation in Apartment House» (hereinafter – Law No. 417-VIII), which made significant amendments to the Law of Ukraine «On Associations of Apartment House Co-owners» and other regulatory legal acts. Thus, the long-awaited changes on the basis of the Law No. 417-VIII had also part 9 of Article 6 of the Law of Ukraine «On Associations of Apartment House Co-owners» according to which the decision at the constituent meeting was adopted if more than half of the total number of all co-owners voted for it. (For comparison, the previous provision of this article stipulates that a decision at a constituent meeting is deemed to be adopted if it is voted for by at least two thirds of present persons who have the right to vote.)

However, in accordance with Law No. 417-VIII, the above article has been supplemented by a new provision, which provides that each co-owner during the voting has the number of votes in



proportion to the share of the total area of the apartment or non-residential premises of the co-owner in the total area of all apartments and non-residential premises, located in an apartment house. The article also provides exceptions to the stipulated rule. Thus, if one person owns an apartment (apartments) or non-residential premises the total area of which is more than 50 percent of the total area of all apartments and non-residential premises of the apartment house, each co-owner at the constituent assembly has one vote, regardless of the number and the area of apartments or non-residential premises, which are in his property.

In accordance with the Law No. 417-VIII, not least important supplement of the article is also the implementation of a written questionnaire of co-owners. It is held in case if at the constituent meeting, and subsequently on the general meeting, the decision did not gain the number of votes «for» or «against». In this case the written poll is held among co-owners who did not vote at the constituent / general meetings.

Surely the written questionnaire significantly facilitates the decision-making by the co-owners, because such a thing as a «quorum» loses its meaning at the constituent meetings and in the future at the general meetings of co-owners. It replaces by the written questionnaire of co-owners.

Legal issues from 2015 on common joint property in apartment houses are regulated by two basic regulatory legal acts:

- the Law of Ukraine «On Associations of Apartment House Co-owners» (Law No. 2866-III);
- the Law of Ukraine «On Peculiarities of Property Rights Implementation in Apartment House» (Law No. 417-VIII).

In accordance with Article 2 of the Law No. 2866-III, this law regulates: the procedure for the creation, registration, reorganization, activity and liquidation of associations, unions; relations of entities of property rights concerning using and disposal of co-owners' joint property in the association; relations between the associations and union as well as state authorities and local self-government authorities; relations between the association and economic entities.

At the same time, in accordance with Article 2 of the Law No. 417-VIII, the subject of regulation is the relations arising in the rights realization process and the emergence of duties of apartment owners and non-residential premises as co-owners of the apartment house. The provision of this law is applied to relations arising in the rights realization process and the emergence of duties of apartment owners and non-residential premises in hostels covered by the Law

of Ukraine «On Ensuring the Realization of Residential and Housing Rights of Hostel Residents».

The Law of Ukraine «On Peculiarities of Property Rights Implementation in Apartment Houses» also extended the rights of co-owners provided for in the Law of Ukraine «On Associations of Apartment House Co-owners». One of the significant innovations was the clear definition of alternative methods of joint property managing in apartment house:

- via self-management through the creation of AAHC;
- via the transfer of all or part of the functions of management to a sole proprietorship or legal entity on the basis of an agreement (to a manager).

In accordance with part 1 of Article 9 of the Law No. 417-VIII, according to the decision of co-owners, all or part of the functions of management of an apartment building may be transferred to the manager, or all the functions to association of apartment house co-owners (a union of association of apartment house co-owners). Consequently, the co-owners have to choose the following alternative options: to resolve all issues concerning the management of the house independently at the meeting; to create association of apartment house co-owners and transfer all functions of management of the house; to transfer the management of a house to a sole proprietorships or legal entity; to transfer part of the functions of managing the house to the manager and leave the other part of the functions in own competence, making decisions at the general meeting in the said order.

The Law No. 417-VIII also amended Article 43 of the Land Code of Ukraine [16], which provides that in case of destruction of apartment house the property rights to the land plot on which such a house is located, as well as the buildings belonging to it, outbuildings and adjoining territory, are kept for the co-owners of the apartment house.

The above provision of law expanded the rights of co-owners of apartment houses at the level of the Law of Ukraine «On Peculiarities of Property Rights Implementation in Apartment House» and the Law of Ukraine «On Associations of Apartment House Co-owners».

With the adoption of the aforementioned regulatory legal acts, a significant breakthrough has been made regarding the establishment of the institution of common joint property in apartment houses in Ukraine. With the help of these provisions of law, the social relations associated with common joint property have been regulated.

During the time of Ukraine's independence, the co-owners of apartment houses received a legal mechanism for the implementation and protection of rights regarding common joint property.

The material presented provides the following conclusions. The formation of common joint property in apartment houses in Ukraine can be divided into four main stages, which are defined by the time of the adoption of laws: the first one is the adoption of the Law of the Union of Soviet Socialist Republics «On Cooperation in the USSR» (May 26, 1988) and subsequently the Law of Ukraine «On cooperation» (July 10, 2003) by independent Ukraine; the second one is the adoption of the Law of Ukraine «On Privatization of State Housing Fund» (June 19, 1992); the third one is the adoption of the Law of Ukraine «On Associations of Apartment House Co-owners» (November 29, 2001); The fourth one is the adoption of the Law of Ukraine «On Peculiarities of Property Rights Implementation in Apartment House» (May 14, 2015).

The extension of the rights of co-owners in apartment houses took place in three main stages, which were caused by the adoption of regulatory legal acts: the first one is the adoption of the Law of Ukraine «On Privatization of State Housing Fund» (June 19, 1992); the second one is the adoption of the Law of Ukraine «On Associations of Apartment House Co-owners» (November 29, 2001); the third one is the adoption of the Law of Ukraine «On Peculiarities of Property Rights Implementation in Apartment House» (May 14, 2015).

The above considerations can be a basis for further studies of the formation of the legislation of Ukraine on common joint property in apartment houses.

#### REFERENCES

1. Zakon Ukrainy "Pro kooperatsiiu v SRSR": vid 26 trav. 1988 r. No. 8998-11 [The Law of Ukraine "On Cooperation in the USSR" from May 26, 1988, No. 8998-11]. (n.d.). [zakon5.rada.gov.ua](http://zakon5.rada.gov.ua/show/v8998400-88). Retrieved from <http://zakon5.rada.gov.ua/laws/show/v8998400-88> [in Ukrainian].
2. Zakon Ukrainy "Pro kooperatsiiu": vid 10 lyp. 2003 r. No. 1087-IV [Law of Ukraine "On Cooperation" from July 10, 2003, No. 1087-IV]. (n.d.). [zakon3.rada.gov.ua](http://zakon3.rada.gov.ua/show/1087-15/ed20141106). Retrieved from <http://zakon3.rada.gov.ua/laws/show/1087-15/ed20141106> [in Ukrainian].
3. Zakon Ukrainy "Pro vlasnist": vid 7 liut. 1991 r. No. 697-XII [Law of Ukraine "On Property" from February 7, 1991, No. 697-XII]. (n.d.). [zakon2.rada.gov.ua](http://zakon2.rada.gov.ua/show/697-12/ed20070620). Retrieved from <http://zakon2.rada.gov.ua/laws/show/697-12/ed20070620> [in Ukrainian].
4. Postanova Rady Ministriv Ukrainskoi RSR "Pro zatverdzhennia Prymirmoho statutu zhytlovo-budivelnoho kooperatyvu": vid 30 kvit. 1985 r. No. 186 [Resolution of the Council of Ministers of the Ukrainian SSR "On the Approval of the Model Statute of the Homebuilding Cooperative" from April 30, 1985, No. 186]. (n.d.). [zakon2.rada.gov.ua](http://zakon2.rada.gov.ua/show/186-85-n). Retrieved from <http://zakon2.rada.gov.ua/laws/show/186-85-n> [in Ukrainian].
5. Haliantykh, M.K., & Kovalenko, H.I. (2002). *Zhytlove pravo Ukrainy [Housing Right in Ukraine]*. Kyiv [in Ukrainian].
6. Postanova Verkhovnoi Rady Ukrainy "Pro proholoshennnia nezalezhnosti Ukrainy": vid 24 serp. 1991 r. No. 1427-XII [Resolution of the Verkhovna Rada of Ukraine "On Declaration of Independence of Ukraine" from August 24, 1991, No. 1427-XII]. (n.d.).

*zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/1427-12> [in Ukrainian].

7. Konstitutsiia Ukrainkoï RSR vid 20 kvit. 1978 r. No. 888-IX [The Constitution of the Ukrainian SSR from April 20, 1978, No. 888-IX]. (n.d.). *zakon3.rada.gov.ua*. Retrieved from <http://zakon3.rada.gov.ua/laws/show/888-09/ed19780420> [in Ukrainian].

8. Konstitutsiia Ukrainy vid 28 cherv. 1996 r. No. 254k/96-VR [Constitution of Ukraine from June 28, 1996, No. 254k/96-VR]. (n.d.). *zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/254k/96-bp/ed19960628> [in Ukrainian].

9. Zakon Ukrainy "Pro pryvatyzatsiiu derzhavnogo zhytlovoho fondu": vid 19 cherv. 1992 r. No. 2482-XII [Law of Ukraine "On Privatization of State Housing Fund" from June 19, 1992, No. 2482-XII]. (n.d.). *zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/2482-12/ed19920619> [in Ukrainian].

10. Tsyvilnyi kodeks Ukrainy: vid 16 sich. 2003 r. No. 435-IV [Civil Code of Ukraine from January 16, 2003, No. 435-IV]. (n.d.). *zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/ru/435-15/ed20030116> [in Ukrainian].

11. Postanova Kabinetu Ministriv Ukrainy "Pro zatverdzhennia Polozhennia pro poriadok orhanizatsii ta diialnosti obiednan, shcho stvoriiuisia vlasnykamy dlia upravlinnia, utrymannia i vykorystannia maina zhytlovykh budynkiv, yake perebuvaie u zahalnomu korystuvanni": vid 31 lyp. 1995 r. No. 588 [Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Regulations on the Organization and Activities of Associations Created by Owners for the Management, Maintenance and Use of Property of Residential Houses, Which is in Common Use" from July 31, 1995, No. 588]. (n.d.). *zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/588-95-%D0%BF/ed20021123> [in Ukrainian].

12. Postanova Kabinetu Ministriv Ukrainy "Pro vnesennia zmin do Polozhennia pro poriadok orhanizatsii ta diialnosti obiednan, shcho stvoriiuisia vlasnykamy dlia upravlinnia, utrymannia i vykorystannia maina zhytlovykh budynkiv, yake perebuvaie u zahalnomu korystuvanni": vid 17 berez. 2000 r. No. 513 [Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Regulations on the Organization and Activities of Associations Created by Owners for the Management, Maintenance and Use of Property of Residential Houses, Which is in Common Use" from March 17, 2000, No. 513]. (n.d.). *zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/513-2000-%D0%BF/ed20000317> [in Ukrainian].

13. Zakon Ukrainy "Pro obiednannia spivvlasnykiv bahatokvartyrnogo budynku": vid 29 lystop. 2001 r. No. 2866-III [Law of Ukraine "On Associations of Apartment House Co-owners" from November 29, 2001, No. 2866-III]. (n.d.). *zakon3.rada.gov.ua*. Retrieved from <http://zakon3.rada.gov.ua/laws/show/2866-14/ed20011129> [in Ukrainian].

14. Zakon Ukrainy "Pro osoblyvosti zdiisnennia prava vlasnosti u bahatokvartyrnomu budynku": vid 14 trav. 2015 r. No. 417-VIII [Law of Ukraine "On Peculiarities of Property Rights Implementation in Apartment House" from May 14, 2015, No. 417-VIII]. (n.d.). *zakon5.rada.gov.ua*. Retrieved from <http://zakon5.rada.gov.ua/laws/show/417-19/paran143#n143> [in Ukrainian].

15. Bryhilevych, V., Kohut, H., & Shvets, V. (et al.). (2012). *Reformuvannia systemy upravlinnia zhytlovoiu nerukhomistiu mista: praktychnyi posibnyk dlia OMS [Reforming the City Housing Real Estate Management System: a practical guide for municipalities]*. V. Bryhilevych (Eds.). Kyiv: Sofiia-A [in Ukrainian].

16. Zemelnyi kodeks Ukrainy vid 25 zhovt. 2001 r. No. 2768-III [Land Code of Ukraine from October 25, 2001, No. 2768-III]. (n.d.). *zakon2.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/2768-14> [in Ukrainian].

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## **Становлення законодавства України щодо права спільної сумісної власності в багатоквартирних будинках**

*Питання спільної сумісної власності в багатоквартирних будинках України досліджували такі вітчизняні вчені: М. К. Галянич, Г. І. Коваленко, В. Бригелєвич та ін. У наукових публікаціях не здійснено аналіз становлення законодавства України щодо права спільної сумісної власності в багатоквартирних будинках. Опрацьовано нормативно-правову базу у сфері теоретичного обґрунтування питань спільної сумісної власності в багатоквартирних будинках Української УРСР та незалежної України. Увагу акцентовано на житлово-будівельних кооперативах як передумові виникнення спільної сумісної власності в багатоквартирних будинках. Висвітлено коло суб'єктів господарювання, які можуть бути вповноважені співвласниками будинку на здійснення управління спільною сумісною власністю багатоквартирного будинку. З'ясовано перелік прав та обов'язків співвласників багатоквартирного будинку щодо створення об'єднання, порядку управління спільним майном будинку. Проаналізовано реалізацію права голосу на зборах співвласників. Окреслено як неточності формулювання законодавства, так й аспекти вдосконалення в процесі становлення інституту спільної сумісної власності в багатоквартирних будинках України. Відповідно до поставленої мети і завдань у статті використано такі загальнонаукові та спеціальні методи: узагальнення; історичний; формально-юридичний; метод аналізу. Уперше схарактеризовано етапи розширення прав співвласників й етапи формування законодавства щодо спільної сумісної власності в багатоквартирних будинках України. Автор продовжує здійснювати подальші розвідки порушеної проблематики в межах наукового дослідження.*

**Ключові слова:** кооператив; об'єднання співвласників багатоквартирного будинку; співвласник; спільна сумісна власність; багатоквартирний будинок.