

Features of Carrying out of General Meeting of Copartners of Proprietors of Habitation

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Abstract: In the given clause researchers consider one of the basic stages of the organisation of work of general meeting of copartners of proprietors of habitation, its direct carrying out. Researchers cause obligatory carrying out of procedures which allow to judge legitimacy of the held meeting and the decisions accepted on it further. Besides researchers prepare recommendations about legislative fastening of the list of documents which should be without fail arranged following the results of carrying out of general meeting of copartners for confirmation of legality of decisions of general meeting. It is necessary to notice that in the clause the justification is given to the point of view according to which the rate acting for today, concerning the minimum quorum of general meeting of copartners, is optimum and the requirement for mitigation or toughening of requirements to quorum questions is not available. In the conclusion, researchers of the clause make offers on unification of rules of carrying out of general meetings of copartners for the purpose of the prevention of various disputes. In this connection, the expediency of display in the current legislation and/or the charter of partnership of such rules of conducting general meeting as obligatory preparation of sheet of registration of copartners which have expressed desire to take part in general meeting (at carrying out of general meeting of copartners in the form of a joint presence without use of voting slips) is proved. And also, the obligatory appendix of copies of the letters of attorney which have been given out by copartners to the representatives for participation in general meeting, for the purpose of confirmation of availability of corresponding powers at the persons participating in meeting.

Key words: The meeting decision, partnership of proprietors of habitation, general meeting of proprietors of premises, general meeting of copartners of proprietors of habitation, clause

INTRODUCTION

The problem of the organisation and carrying out of general meeting of copartners of proprietors of habitation acquires day by day more and more actual character. Earlier one of researchers of the clause considered the legal nature of general meeting of copartners and also the volume of the competence of the supreme body of management of partnership was analyzed (Liliya, 2015a, b).

Preparation and carrying out of general meeting of copartners of proprietors of habitation can be divided into following stages:

- Preparation of carrying out of general meeting
- General meeting convocation
- General meeting carrying out
- Meeting summarising

It is necessary to notice that, the assumption of infringements at these stages can become a basis for acknowledgement of general meeting and the decisions accepted on it, void (CCRF, 1994).

The closing stage of the organisation of work of general meeting of copartners is its carrying out in which frameworks following compulsory procedures in our opinion, should be conducted:

- Registration of the copartners who have expressed desire to take part in general meeting, with obligatory check of their powers
- Determination of quorum of general meeting
- Determination of an order of conducting meeting
- Voting, counting of votes and voting summarising
- Preparation of resulting documents of general meeting

MATERIALS AND METHODS

Theory: The housing legislation gives to the copartner of proprietors of habitation the right to participate in general meeting as personally and through the representative (HCRF, 2004). The important role is played by check of powers of the representative of the copartner of proprietors of habitation general meeting which should be arranged properly according to positions by point 4 and 5 clauses 185 of the Civil Code of the Russian Federation.

Legislatively it is not specified, whose obligations include registration of the copartners participating in meeting and also check of powers of representatives. However by the general rule, the specified powers are performed or the initiator of carrying out of general meeting or counting by the meeting commission.

RESULTS AND DISCUSSION

By analogy to clause 56 of the Joint Stock Companies Law (The Federal Act, 1996) members the commissions of general meeting of copartners of proprietors of habitation have the right:

- To register the copartners participating in general meeting
- To check powers of representatives of copartners along with the initiator of carrying out of meeting
- To determine availability of quorum
- To count up voices, to sum up voting and also to constitute the report on voting results

It is necessary to pay special attention on questions of availability of quorum at general meeting of copartners of proprietors of habitation. It is legislatively fixed that general meeting of copartners is allocated with the right to make decisions concerning the agenda only in the presence of certain quorum. Absence of quorum is the fundamental breach of the current legislation attracting acknowledgement of decisions, accepted on meeting, void.

According to a part 3 clauses 146 of the Housing Code of Russia general meeting of copartners is competent, if on it there are copartners or their representatives possessing >50% from total number of voices of copartners. Point 1 of Clause 181.2 of the civil code also says that the meeting decision is considered accepted if for it the majority of participants of meeting has voted and thus in meeting participated not <50% from total number of participants of corresponding Civil Law community, that is in this case partnerships of proprietors of habitation.

In turn, taken part in general meeting in the form of a joint presence the copartners registered for participation in it in day of carrying out of specified meeting till the moment, stipulated in the notification of its carrying out are considered. Taken part in the general meeting which is conducted in the form of correspondence voting, copartners are considered, whose voting slips are received before date the termination of their acceptance.

Hence, general meeting in the form of a joint presence is considered taken place if the beginnings at the right time of its carrying out the quorum provided by the housing legislation takes place.

In our opinion, the legislator, establishing serious enough requirements to number of persons-participants of general meeting, starts with that circumstance that only participation in general meeting of the copartners possessing simple majority of votes, can testify that the decisions accepted at general meeting, correspond to interests both the partnership and all its members. Establishing the minimum quantity of voices which is necessary and enough for decision-making concerning the agenda, in our opinion, the legislator started with the same reasons. By a general rule, decisions on the majority of the questions carried to the competence of general meeting, are accepted by majority of votes from total number of voices of copartners or their representatives who are present at given meeting.

So, the part of 3 clauses 146 of the housing code contains the list of questions on which decisions are accepted by simple majority of votes.

On the most important questions carried to the competence of general meeting of copartners, the decision are accepted not less than two thirds of voices of total number of voices of copartners. To such questions the legislator carries: decision-making on reorganisation and partnership liquidation, liquidation committee appointment, the statement of intermediate and definitive liquidating balances; about reception of extra means, including credits; determination of directions of use of the income of partnership economic activities.

It is obvious that the first group of questions by sight the legislator, does not represent special importance as the minimum quantity of voices necessary and sufficient for decision-making concerning the agenda, settles payments concerning total number of voices of copartners present at given meeting or their representatives, on the second group of questions-concerning total number of voices of copartners that is availability of quorum for decision-making on the specified questions is determined not by quantity present on meeting and total of copartners.

On the one hand, high requirements of the legislator to a poll of the copartners necessary for quorum, push initiators and organizers responsibly enough to approach to the proper notice about it, on the other hand, increase probability of absence of quorum and as consequence, impossibility of carrying out of general meeting. Accordingly, increased requirements of the legislator to the quorum, the realisation of the rights of copartners directed on provision on participation in general meeting, as a rule, lead to infringement of the specified rights.

It is necessary to agree that the establishment of necessary quorum in the smaller size, than is provided by the current legislation, on the one hand, reduces probability of decision-making that general meeting has not taken place in view of a low appearance of copartners, on the other hand, can call into question democratic character and legitimacy of the decisions accepted at general meeting and as consequence, to cause complexities in their execution. Thus, unfair initiators/organizers of carrying out of general meeting in case of an establishment smaller than, it is provided by the current legislation, quorum can be interested in not the notification of all persons allocated with the right of participation in general meeting that will cause infringement of legitimate rights and interests of copartners.

Besides the probability of carrying out of "parallel" meetings, i.e., the meetings which are conducted simultaneously by several initiators, more often pursuing opposite interests will increase. Thus, application of an effective standard of the legislation on quorum without problems allows to specify legality of carrying out of general meeting. In case of legislative decrease in available quorum the dispute resolution concerning legality of carrying out of "parallel" general meetings will be performed judicially that taking into account the developed court practice can be tightened for long time that can cause infringement of lawful diligent participants of corporate legal relationship.

With accounting above the stated, it is necessary to recognise that the rate acting for today, concerning the minimum quorum of general meeting of copartners is optimum and requirements for mitigation or toughening of requirements to quorum questions in our opinion is not available.

The part of 3 clauses 45 of the housing code contains the peremptory rule which in case of absence of the quorum established by the law for carrying out of annual general meeting of copartners, makes obligations of initiators carrying out of repeated meeting with the same agenda. In the absence of quorum for carrying out of extraordinary general meeting of copartners the repeated

meeting with the similar agenda can be conducted. Irrespective of a kind of conducted general meeting (annual or extraordinary) the quorum of repeated meeting remains invariable.

In our opinion, it is reasonable to bring rate which would regulate an order of carrying out of repeated annual general meeting in case of absence of quorum for its carrying out in the presence of the court relevant decision in the acting housing code: "Repeated annual general meeting of copartners of proprietors of habitation is assembled and conducted by the person or the controls of partnership specified in a judgement and if the specified person or controls of partnership has not assembled annual general meeting of copartners of proprietors of habitation in the term specified by a statement, the repeated meeting of copartners is assembled and conducted by other persons or the partnership controls addressed with the claim in court provided that these persons or partnership controls are specified in a statement".

It is necessary to pay attention that the rate offered by us should be applied only in case of absence of quorum to carrying out of annual general meeting of copartners of proprietors of habitation on the basis of a statement. In our opinion, the specified rate on carrying out of extraordinary general meetings of copartners of proprietors of habitation does not extend.

Consequences of absence of quorum for carrying out of repeated annual general meeting of copartners legislatively are not settled. However, various researchers offer the variants of the decision of this problem. For example, Meteleva (1998) speaks about absence of necessity to assemble the third and the subsequent meetings, proving it that if the proper notice about meeting the participation question/nonparticipations in general meeting dares each copartner independently took place. Therefore in its opinion, competency of repeated general meeting should be legislatively provided at any quorum. Shitkinoj (2015) who insists on necessity of convocation of repeated general meeting for the third time adheres to other point of view and suggests to recognise competency of the general meeting, appointed the third time, even in the absence of the quorum established by the law.

In our opinion, each of the sounded points of view has rational grain. It is thought that the option of an order of carrying out of repeated meetings should be implemented copartners of proprietors of habitation whom, accepting the partnership charter, should include in it positions about an order of carrying out of similar meetings.

According to parts of 5-6 clauses 48 of the housing code in case voting by questions of the agenda of general meeting is performed by means of the decisions of copartners arranged in writing on the questions put on voting, at summarising voices exclusively on those questions on which are taken by the person participating in voting into consideration, one of the offered variants of voting is chosen only: for against or has refrained. Hence, if literally to interpret analyzed rate from the offered variants one should be designated a tick, plus, the signature or otherwise. Arranged with infringement of the given requirement of the decision admit void and voices on questions contained in them are not counted up. In case, the decision of the proprietor on the questions put on voting, contains some questions non-observance of the given requirement concerning one or several questions does not involve acknowledgement specified the decision void as a whole.

In our opinion, in case of revealing at summarising of voting of two or more voting slips filled with one person in which on the same question of the agenda the copartner notes excellent from each other voting variants bulletins should be recognised by void not completely and regarding voting by the specified question.

Some researchers declare problems of the signature of bulletins copartners. In particular, necessity of signing of a voting slip by the copartner who taken part in general meeting and has filled it with own hand is legislatively fixed. However, absence of the signature of the copartner is not specified in voting slips as a basis for voting slip acknowledgement void.

Undoubtedly that the specified blank in the current legislation attracts substantial effects at calculation and voting summarising. Accordingly, in our opinion, it is necessary to add the housing legislation with position according to which absence of the signature of the copartner or other authorised person (the representative of the copartner), taken part in general meeting, on a voting slip should enter into the list of bases of acknowledgement of the decisions accepted by it, void.

According to Clause 46 of the housing code of the decision of general meeting of copartners are arranged by reports in an order established by general meeting. So, by results of carrying out of general meeting of copartners of proprietors of habitation should be constituted:

- The report the commissions, signed by the elite at the given meeting members the commissions
- The report of general meeting signed by the chairman and the secretary of meeting also the selected copartners at the specified meeting

The rates stated in points 3 and 4 clauses 181.2 of the civil code and applied, including to general meetings of copartners, make demands to the maintenance of reports of general meetings which it is separated depending on the form of the held meeting.

Parts of 3 and 4 clauses 46 of the housing code of the Russian Federation contain rates according to which the decisions accepted by general meeting of copartners and also voting results should be brought to the notice all copartners of the initiator and/or the organizer of carrying out of such meeting. Statements from reports with results of voting should be placed in an apartment house which is specified by the decision of general meeting and is accessible to all proprietors of premises in the given house within ten days from the date of accepting of the specified decisions.

Reports of general meetings of copartners and the decision of members concerning the agenda, stated in voting slips, are stored in a place or to the address which are specified by the decision of participants of this meeting. As a rule, all documents connected with the organisation and carrying out of general meetings of copartners of proprietors of habitation which concern the notification of general meeting carrying out, sheet of registration of the copartners who have taken part in general meeting, the report the commissions, the report of general meeting and voting slips (at availability), are together sewed, numbered sheets and on the back last page becomes a mark about total of the sewed sheets, assured by the signature of the chairman of general meeting.

In practice by a legal investigation the New-Savinovsky District court of a city of Kazan studied the circumstances connected with availability of three summary reports of general meeting with one agenda but with different texts and results of voting (Anonymous, 2015).

During proceeding upon contest of the decisions accepted at general meeting, the participant of Civil Law community can declare that:

- At general meeting of copartners, it was not brought for discussion and this or that question of the agenda was not put on voting
- The general meeting report contains the information on the decisions accepted by copartners not representing the facts
- The copartner voted differently, than is specified in the report constituted by members of the commission
- The copartner did not accept participation in general meeting while voices belonging to it are considered at leading of results of voting

For the prevention of similar disputes on the given circumstances, it is reasonable to partnerships of proprietors of habitation to display in the legislation and/or the charter following rules of conducting general meeting: without fail at carrying out of general meeting of copartners in the form of a joint presence which is not assuming decision-making with use of voting slips to prepare sheet of registration of the copartners who have taken part in general meeting, with the obligatory appendix of copies of the letters of attorney which have been given out by copartners to the representatives for participation in general meeting.

In case of realisation of voting by a simple raising of hands without application of voting slips reasonably during general meeting carrying out to lead audio or video recording on what the copartners who are present at general meeting should be notified and about what the mark in the general meeting report should be made.

CONCLUSION

Thus, the facts stated above confirm opinion of the researcher that except the report of general meeting of copartners containing the decisions of its participants, at carrying out of general meeting in the form of a joint presence, it is reasonable to partnership of proprietors of habitation to prepare and store following documents which can confirm further legality of carrying out of the specified meeting and the decisions accepted on it:

- The notification of carrying out of general meeting of copartners with the appendix of the documents confirming observance of the requirement of the legislator about the proper notice of all copartners
- Sheet of registration of the copartners who have taken part in general meeting with the appendix of documents, the persons confirming power participating in carrying out of meeting
- Voting slips with decisions of the copartners who have taken part in given meeting, concerning the agenda (in case of carrying out of general meeting in the form of a joint presence with use of bulletins)

Except the report of general meeting of copartners containing results of voting, at carrying out of general meeting in the form of correspondence voting it is reasonable to partnership of proprietors of habitation to prepare and store following documents which can confirm further legality of carrying out of the specified meeting and the decisions accepted on it:

- The notification of carrying out of general meeting of copartners with the appendix of the documents confirming observance of the requirement of the legislator about the proper notice of all copartners
- Voting slips with decisions of the copartners who have taken part in given meeting, concerning the agenda
- The report the commissions, signed by members the commissions, the elite at general meeting

We consider that, the offered recommendations will allow partnerships of proprietors of habitation to avoid negative consequences by consideration of disputes in courts.

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