



## **PROBLEMS OF SHARING COMMON PROPERTY OF HUSBAND AND WIFE**

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<b>ABSTRACT</b>	<b>KEY WORDS</b>
<p>In recent years, issues of legal reform in the field of property relations, including the relations arising from the division of the property of the spouses, have been increasingly raised in scientific circles and at the legislative level. Property relations of husband and wife are regulated by civil and family legislation. Revision of the concepts of "common property of husband and wife" of the Family Code, in particular, requires clarification, development of criteria for distinguishing personal and joint obligations. The article analyzes the principles of the distribution of property of the spouses. It is said that it is necessary to expand the concept of the property of husband and wife, to include virtual objects of economic value in it. The problem of the distribution of the spouse's debts, the abuse of the rights of the spouses in the division of common property is considered. The issues that arise in the resolution of disputes about the division of property acquired during marriage, the judicial practice in this regard is studied.</p>	<p>Spouse, common property of the spouses, division of property, debts, personal property of the spouses, shares in the common property, abuse of rights.</p>

### **Introduction**

One of the most common disputes between spouses is the division of common property. In this case, their common property regime will be canceled, each of the spouses will receive ownership of a part of this property. In some cases, as the transfer of certain types of property from joint ownership to shared ownership; each of the spouses (former spouses) is allocated a certain property or a part of it in kind or in case of unequal shares or with compensation.

Issues related to the distribution of common joint property are regulated by the norms of civil, civil procedural and family law. However, there is a need to improve some norms in solving these issues in family legislation.

Most disputes arise during the division of real estate, because it has the highest value, and it is often impossible or very difficult to separate a share or part of it. Property division can be done during marriage, at the same time as annulment of marriage, or after divorce. In the latter case, i.e. after separation, it is important to remember that the 3-year statute of limitations applies. In Article 27, Part 9 of the Family Code, a three-year statute of limitations applies to the claims of a divorced husband and wife for the division of common property. The expiration of the three-year statute of limitations

for the division of joint property of a divorced couple in Part 9 of Article 27 of the Family Code does not start from the time of termination of marriage (that is, from the day when the divorce was registered in the registry office or from the day when the court's decision came into force), but the person should be counted from the day when he knew or should have known that his right was violated (Part 1 of Article 154 of the Civil Code).

The material presented in the educational literature is of a general nature. This topic is covered in the works of domestic scientists, such as Karakhodzhaeva D.M. [1-10], Burkhanova L.M. [11-36], Sharakhmetova U.Sh. [37-44], Egamberdiev E.Kh. [45-59], Yeschanova D.A. [60-63], Mekhmonov K. [64-78] and others.

Property can be divided according to the agreement of the spouses. It must be in writing and notarized. The terms of such an agreement must meet the requirements of the current legislation and must not violate the rights and legitimate interests of third parties. Otherwise, such an agreement may be considered invalid. For example, the former spouses of Mirabad Interdistrict Court on Civil Cases F.S. and F.A. annulled the decision on approving the agreement on the division of property acquired during marriage. According to the agreement approved by the court of first instance, the rights of the creditors of the citizen F.S. were violated, that is, the impounded property, whose debts should be paid, was transferred to the property of F.A. According to Article 52 of the Law of the Republic of Uzbekistan No. 258-II of 29.08.2001 "On the Execution of Court Documents and Documents of Other Bodies", the residential property remaining in the ownership of F.S. is considered to be non-enforceable property. Other assets in F.S.'s account that could be collected on his debts to U. were not supported by the case file.

Also, the court did not take into account that the terms of the agreement do not correspond to the norms of family law, that is, to Articles 23, 27, Part 3 and Article 28 of the Family Code. According to the terms of this agreement, the apartment purchased by the defendant after the dissolution of the marriage is the joint property of the spouses, and the sum of money received by the plaintiff from the apartment sold during the marriage is included. general debts related to the purchase of the property were not taken into account and the issue of the amount of monetary compensation for exceeding the value of the share was not resolved. There are no references to the issue of the right to withdraw from the equal shares of the husband and wife in the common property

A settlement agreement may also be entered into during the trial. According to part 2 of Article 15 of the Law of the Republic of Uzbekistan "On Mediation", mediation is used in out-of-court procedure, in the process of considering a dispute in a court procedure, until the court enters a separate room (consulting room) to receive a court document, as well as in the process of executing court documents and documents of other bodies. possible

If the parties reach a mediation agreement in the pre-trial process, the mediation agreement is based on Article 61 of the Law of the Republic of Uzbekistan "On Notary", the notary confirms the mediation agreement concluded between the parties. If no agreement is reached, the dispute will be referred to the court for resolution. A lawsuit can be filed by one of the spouses, a creditor, a bailiff. The creditor has the right to demand the separation of the citizen's share in the common property for recovery. In the last paragraph of Article 47 of the Law "On the Execution of Court Documents and Documents of Other Bodies", in cases where the debtor owns the relevant property on the basis of common property rights with other persons, the levy is focused on his share determined in accordance with the law.

Also, if the husband or wife cannot apply to the court due to health, age, being declared incompetent and other good reasons) the prosecutor; the heir (has the right to divide his share in the joint property, and then apply for the division of the inheritance). The claim is filed according to the defendant's place of residence (territorial jurisdiction). But if there is a claim for the division of immovable property in the claim for the division of common property, it will be considered at the place where this property is located (Article 246 of the Civil Code). The joint property of a husband and wife is divided according to Article 27 of the Family Code.

Article 23 of the Family Code includes the total joint property of a husband and wife: the total property acquired by a husband and wife during marriage (the joint property of a husband and wife) includes the income earned by each of the husband and wife from work, entrepreneurial activity, and the results of intellectual activity, which are includes pensions, allowances, as well as other monetary payments not intended for a special purpose (amounts of financial assistance, sums paid in the form of compensation for damage caused due to disability or other damage to health, etc.) Movable and immovable objects, securities, shares, deposits, shares in the capital invested in credit institutions or other commercial organizations and any other property acquired by the husband and wife during the marriage, registered in the name of one of the husband or wife no matter in whose name or by which of the husband and wife the funds are entered, they are also the joint property of the husband and wife. This above list is open, and any other property acquired by the husband and wife during the marriage is included in the general joint property. Therefore, a married couple can own any property, except for some types of property that do not belong to citizens according to the law. The amount and value of property is not limited, except for cases where such limitations are established by law (Part 2 of Article 207 of the Civil code).

The issue of virtual property, which is considered relevant today, is discussed in the literature. In particular, Ya.A. Perepelkina expresses an opinion that there is a gap in the regulatory legal regulation of virtual objects. This creates grounds for violating the user's interest in owning the game attribute or profiting from its sale. Violation of the user's interests may be related to the actions of the game developer (blocking the account, deleting game attributes from the user's account, changing the graphic and functional properties of the game property) or actions of third parties (theft of game attributes as a result of account hacking).

In the Republic of Belarus, the court included the virtual game participant account in the scope of the common joint property of the spouses under the condition of division in the divorce proceedings, because the "value" symbol allows the inclusion of virtual property.

Today, joint property of spouses is considered as a set of separate legal objects. Therefore, it is suggested to clarify this concept, to consider it as a whole property complex that includes the property, property rights and joint debts of the spouses. In order to recognize the property as jointly acquired in marriage, it is not enough that this property is registered in the name of one of the spouses. A necessary condition for property to be recognized as common property is that it was acquired at the expense of joint funds. If the spouses cannot reach an agreement, the dispute over the division of property will be resolved in court. When considering these cases, the court determines the time of the actual termination of family relations and the management of the family business, because the property regime of the spouses changes precisely from this. The property to be divided includes the common property of the husband and wife that exists at the time of the case or is owned by third parties.

In the division of property, the right of spouses to sue for joint debts and obligations arising from family interests is also taken into account (Article 28 of the Family Code of the Republic of Uzbekistan). According to part 3 of Article 28 of the Family Code of the Republic of Uzbekistan, the common debts of the spouses for the division of common property are distributed among the spouses in proportion to the shares given to them.

Difficulties may arise in distinguishing between public and private obligations. The decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the practice of applying the legislation by the courts in cases related to divorce" in part 3 of paragraph 20, in the division of property, as well as the joint debts of the spouses (the third part of Article 28 of the family Code) and the obligations arising in the interests of the family right is taken into account.

However, the courts should consider that debts and other expenses related to the wedding, as well as other events related to marriage ceremonies, are not taken into account (Article 44 of the Family Code). At the same time, the burden of proving these circumstances rests with the party demanding the division of the debt.

N.M., Ershova In this regard states that "personal debts of the husband or wife should be considered as having arisen before or at least during the marriage, but related to his or her personal property".

According to L.M. Pchelintseva, the personal debts of spouses should include those that arose independently before the registration of the marriage: - and after the registration of the marriage, only to meet the purely personal needs of the husband or wife; - as a result of debts burdening the property inherited by one of the spouses during the marriage (debt of the testator); - as a result of damage caused by the husband or wife to other persons; - due to the fact that the husband or wife did not fulfill maintenance obligations towards children (from another marriage) or family members; - emphasizes the need to proceed from other grounds that give rise to obligations closely related to the debtor's personality.

If one of the spouses concludes a debt contract or enters into another agreement related to the emergence of a debt, such a debt can be recognized as common only if there are circumstances arising from paragraph 3 of Article 28 of the Family Code, if there is an obligation to prove. In cases of this category, it is necessary to determine the circumstances of legal importance: - the purpose of obtaining loan funds by the husband or wife who claims to recognize the debt as joint; - whether the obligation arose at the initiative of both spouses or one of the spouses, but based on family interests; - determining whether the money received by one of the spouses was spent on family needs. If these circumstances are not proven, the claim for recognition as a general debt will not be satisfied.

According to Article 25 of the Family Code, the property owned by a husband and wife before marriage, as well as the property received by each of them during marriage as a gift, inheritance or on the basis of other gratuitous transactions, is the property of each of them.

It is the issues of the property of the husband and wife before the marriage, as well as the property received by each of them during the marriage as a gift, inheritance or on the basis of other free transactions, which are mentioned in this article, cause some problems in practice. This registered property leads to the emergence of the so-called "borderline" property, that is, it can be called property for which it is not possible to make a clear conclusion about the right of ownership.

Because in determining the legal regime, the lawgiver mentions the property of each of the husband and wife (Article 25 of the Family Code), the property acquired through free transactions, but does

not say anything about the fate of the property acquired by selling the other or by other means of alienation.

It is common for property (such as a home) to be acquired during marriage with money from the sale of personal property of the husband or wife. On the one hand, since the property belongs to one of the spouses before the marriage and is his/her personal property, the income from its sale is considered the personal property of this spouse. On the other hand, property is considered jointly acquired (during marriage).

Thus, under the regime of "limitation" one of the husband or wife includes the property acquired by the sale of the property in which he has personal property rights. In particular, according to the Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the practice of applying legislation by the courts in divorce cases", the property owned by the husband and wife before the marriage, as well as the property received by each of them during the marriage as a gift, inheritance or on the basis of other free transactions, it is necessary to enter that the funds and goods received as a result of disposal of the property are his own property.

At the same time, it is clear that the lack of regulation of this issue in the current legislation is a gap that should be filled not by the Supreme Court of the Republic of Uzbekistan, but by making additions to the Family Code of the Republic of Uzbekistan, and we believe that a provision related to Article 25 of the Family Code should be included.

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